

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

Case No. 1:19-cv-2379

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

This is a civil action for declaratory and injunctive relief brought by Plaintiff Committee on the Judiciary of the United States House of Representatives (Judiciary Committee) against Defendant Donald F. McGahn II. The suit, which the United States House of Representatives has expressly authorized, arises out of the Judiciary Committee's efforts to enforce a duly authorized, issued, and served Congressional subpoena to McGahn (McGahn Subpoena). The Judiciary Committee alleges as follows:

**INTRODUCTION**

1. In an unprecedented attack on our Nation's democratic institutions, "[t]he Russian government interfered in the 2016 presidential election in sweeping and systematic fashion."<sup>1</sup> In

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<sup>1</sup> Robert S. Mueller III, *Report On The Investigation Into Russian Interference In The 2016 Presidential Election*, Vol. I at 1 (March 2019) (*Report*), <https://perma.cc/DN3N-9UW8>.

his *Report On The Investigation Into Russian Interference In The 2016 Presidential Election* (Report), in his public statement of May 29, 2019, related to the Report, and in testimony before the Judiciary Committee and House Permanent Select Committee on Intelligence, Special Counsel Robert S. Mueller III has told Congress and the American people that President Donald J. Trump repeatedly used his official power to attempt to thwart the Special Counsel's investigation into this interference—including into whether any individuals associated with his own Presidential campaign coordinated with the Russian government.<sup>2</sup> The Judiciary Committee is now determining whether to recommend articles of impeachment against the President based on the obstructive conduct described by the Special Counsel. But it cannot fulfill this most solemn constitutional responsibility without hearing testimony from a crucial witness to these events: former White House Counsel Donald F. McGahn II. McGahn, however, has defied a Congressional subpoena to appear before the Judiciary Committee, at the direction of President Trump, who claims McGahn is “absolutely immune” from testifying, a claim with no basis in law. The Judiciary Committee thus seeks to enforce the McGahn Subpoena in its entirety.

2. The Report documents a recurring, troubling pattern of Presidential actions to obstruct the Special Counsel's investigation into Russia's far-reaching interference in the 2016 U.S. election. The Report describes, among other misdeeds, how President Trump attempted to use his official power to oust Special Counsel Mueller and end his investigation; to force then-Attorney General Jeff Sessions to transgress Department of Justice (DOJ) ethics rules to limit the

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<sup>2</sup> *Report*, Vol. II; see also Exhibit A, *Oversight of the Report on the Investigation Into Russian Interference in the 2016 Presidential Election: Former Special Counsel Robert S. Mueller, III: Hearing Before the H. Comm. on the Judiciary*, 116th Cong. (July 24, 2019), Hearing Tr. at 17; Robert S. Mueller, III, Special Counsel, U.S. Dep't of Justice, *Statement on Investigation into Russian Interference in the 2016 Presidential Election* (May 29, 2019) (Mueller Public Statement), <https://perma.cc/7JY5-48XJ>.



scope of Mueller's investigation; to demand that White House staff generate false accounts of the President's conduct; and to influence witnesses' testimony or otherwise encourage witnesses not to cooperate with the investigation.<sup>3</sup> In total, the Report provides evidence of ten separate episodes of potentially obstructive conduct by the President. As Special Counsel Mueller has emphasized, when a subject of an investigation obstructs that investigation or lies to investigators, it "strikes at the core of the government's effort to find the truth and hold wrongdoers accountable."<sup>4</sup>

3. Despite the Special Counsel's recitation of compelling evidence that President Trump's actions satisfied each of the elements of criminal obstruction of justice, a DOJ legal interpretation preventing the indictment of a sitting President means that Congress is the sole branch of government currently empowered to hold the President accountable. Indeed, the Report unmistakably invokes Congress's role, stressing the importance of "constitutional processes for addressing presidential misconduct."<sup>5</sup> And in his May 29, 2019, statement, Special Counsel Mueller confirmed that "the Constitution requires a process other than the criminal justice system to formally accuse a sitting President of wrongdoing."<sup>6</sup>

4. That process is underway. The Judiciary Committee is conducting an investigation to understand the scope and extent of misconduct by President Trump, and that investigation includes consideration of whether the Judiciary Committee should exercise its Article I powers to recommend articles of impeachment. Articles of impeachment already have been introduced and referred to the Judiciary Committee in this Congress. To fulfill its duties,

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<sup>3</sup> *Report*, Vol. II at 7, 157.

<sup>4</sup> Mueller Public Statement.

<sup>5</sup> *Report*, Vol. II at 1.

<sup>6</sup> Mueller Public Statement.

the Judiciary Committee must obtain testimony and evidence from witnesses to the President's actions to determine whether to recommend such articles against the President, or whether to recommend additional or alternative articles that the Judiciary Committee may prepare.

5. McGahn, who was the White House Counsel during the relevant period, is the most important witness, other than the President, to the key events that are the focus of the Judiciary Committee's investigation. The Report makes clear that McGahn witnessed multiple serious acts of potential obstruction of justice by the President—including demanding that McGahn himself have the Special Counsel removed and then create a false record to conceal the President's obstructive conduct. Given his central role in these and other events outlined in the Report, McGahn is uniquely positioned to explain those events, bring additional misconduct to light, and provide evidence regarding the President's intent.

6. McGahn's testimony is also essential to the Judiciary Committee's other constitutionally authorized legislative and oversight duties, including considering the need for new legislation and amendments to existing laws addressing the types of misconduct the Report describes, overseeing ongoing investigations arising from the Special Counsel's initial investigation, and ensuring the integrity of our elections in 2020 and beyond.

7. Despite the Judiciary Committee's clear need for McGahn's testimony, President Trump has openly declared his opposition to, and intent to block, the Judiciary Committee's exercise of these legislative, investigative, and oversight responsibilities—especially as they relate to the President's own potential misconduct. The President has declared, for instance, that

“We’re fighting all the subpoenas,”<sup>7</sup> “I don’t want people testifying,”<sup>8</sup> and “No Do-Overs!”<sup>9</sup> Consistent with that approach, the President has sought to prevent McGahn—now a private citizen—from testifying before the Judiciary Committee. The day before McGahn’s required appearance before the Judiciary Committee pursuant to the subpoena at issue in this litigation, the President purported to direct McGahn not to appear, claiming that McGahn is “absolutely immune” from compelled testimony.<sup>10</sup> The next day, without offering any accommodation, McGahn failed to appear based on the President’s directive.

8. The President’s claim that McGahn is entitled to “absolute immunity” has no basis in law, and no court has ever accepted this type of blanket claim in response to a Congressional subpoena. McGahn thus must appear before the Judiciary Committee and answer all of its Members’ questions unless a valid basis for asserting executive privilege exists as to any specific matter. To date, the President has not formally attempted to invoke executive privilege. Moreover, by authorizing the public release of the Report and extensively commenting about its substance after its release, among other statements and actions, the President has waived any privilege about matters and information discussed in the Report. When the Report was released publicly, Attorney General William Barr confirmed that the President “would not assert privilege over the Special Counsel’s report” and, therefore, the Report

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<sup>7</sup> See *Remarks by President Trump Before Marine One Departure*, White House (Apr. 24, 2019), <https://perma.cc/W7VZ-FZ3T>.

<sup>8</sup> Robert Costa et al., *Trump Says He Is Opposed to White House Aides Testifying to Congress, Deepening Power Struggle with Hill*, Wash. Post (Apr. 23, 2019), <https://perma.cc/FL3H-TUXL> (“I don’t want people testifying to [House Democrats], because that is what they’re doing if they do this.”).

<sup>9</sup> Donald J. Trump (@realDonaldTrump), Twitter (May 22, 2019, 7:31 PM), <https://perma.cc/A5NM-F9B3>.

<sup>10</sup> Exhibit B, Letter from Pat Cipollone, Counsel to the President, to Jerrold Nadler, Chairman, H. Comm. on the Judiciary, at 1 (May 20, 2019).

contained “no material ... redacted based on executive privilege.”<sup>11</sup> And DOJ’s Office of Legal Counsel (OLC) has acknowledged that the Attorney General’s release “of a redacted version of the Special Counsel’s report (with the President’s consent) extinguish[ed] the Executive Branch’s confidentiality interests in the precise information” revealed in the Report.<sup>12</sup>

9. Notwithstanding the President’s broad declaration of his intent to defy all subpoenas—and his purported direction that McGahn defy this one—the Judiciary Committee has made every effort at accommodation to avoid the need for this litigation. The Judiciary Committee has initiated multiple discussions with McGahn’s counsel, as well as the White House, over several months in an attempt to reach a negotiated resolution—all to no avail. On July 26, 2019, McGahn made clear that he will follow the President’s directive and will not comply with the Judiciary Committee’s subpoena for public testimony. The accommodations process is therefore at an impasse.

10. McGahn’s refusal to testify harms the Judiciary Committee by depriving it of a witness and information that are essential to its investigation, thereby impeding the Judiciary Committee’s ability to facilitate the House’s fulfillment of its Article I functions. These functions include the most urgent duty the House can face: determining whether to approve articles of impeachment. That refusal also is impeding the Judiciary Committee in its ability to assess the need for remedial legislation and to conduct oversight of DOJ. All of these tasks are time-limited. The House, and with it the Judiciary Committee’s investigation, expires on

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<sup>11</sup> Press Release, U.S. Dep’t of Justice, *Att’y Gen. William P. Barr Delivers Remarks on the Release of the Report on the Investigation into Russian Interference in the 2016 Presidential Election* (Apr. 18, 2019), <https://perma.cc/9GVL-G8XZ> (Barr Public Statement).

<sup>12</sup> Exhibit C, Memorandum from Steven A. Engel, Assistant Att’y Gen., Office of Legal Counsel, to Pat A. Cipollone, Counsel to the President, *Re: Testimonial Immunity Before Congress of the Former Counsel to the President*, at 13 (May 20, 2019).

January 3, 2021. The delay caused by McGahn's refusal to testify thus severely impedes the Judiciary Committee's ability to do its time-sensitive work. Accordingly, to redress these injuries, the Judiciary Committee asks this Court to order McGahn to comply with the subpoena for his testimony and appear before the Judiciary Committee forthwith.

### **JURISDICTION AND VENUE**

11. This Court has jurisdiction pursuant to 28 U.S.C. § 1331. This case arises under Article I of the Constitution of the United States, and implicates Article I, Section 2, Clause 5, which provides the House of Representatives with "the sole Power of Impeachment," and Article I, Section 1, which vests "[a]ll legislative Powers" in the Congress of the United States.

12. This Court has authority to issue a declaratory judgment and order other relief that is just and proper pursuant to 28 U.S.C. §§ 2201 and 2202.

13. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2).

### **PARTIES**

14. Plaintiff Committee on the Judiciary of the United States House of Representatives is a standing committee of the House that, among other duties, exercises jurisdiction over impeachment and with respect to federal criminal statutes, Presidential succession, and activities that affect the internal security of the United States. The Judiciary Committee also conducts oversight of the Department of Justice.

15. Defendant Donald F. McGahn II served as White House Counsel to President Trump from January 20, 2017, until he left the White House on October 17, 2018. McGahn currently practices law at Jones Day, a law firm, in Washington, D.C.

## ALLEGATIONS

### I. LEGAL FRAMEWORK

16. The Judiciary Committee has constitutional and other legal authority to legislate, investigate, and conduct oversight, including into President Trump’s misconduct related to the Special Counsel’s investigation.

17. Article I of the Constitution provides that “[t]he House of Representatives ... shall have the sole Power of Impeachment.”<sup>13</sup> Article I also vests Congress with “[a]ll legislative Powers.”<sup>14</sup> Congress’s powers include the authority to investigate matters relating to subjects within its broad legislative purview; conduct oversight of Executive Branch agencies; examine whether those agencies are faithfully, effectively, and efficiently executing the laws; and determine whether changes to federal law are necessary and proper. The Supreme Court has long recognized that the Constitution vests the House with the power of inquiry—with process to enforce it—commensurate with the House’s Article I legislative authority to investigate any subject on which “legislation could be had.”<sup>15</sup>

18. The Constitution commits to each chamber of Congress the authority to “determine the Rules of its Proceedings.”<sup>16</sup> Pursuant to this authority, the House of Representatives of the 116th Congress adopted the Rules of the House of Representatives (House Rules), which govern the House during the current two-year term.<sup>17</sup> The House Rules establish

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<sup>13</sup> U.S. Const. Art. I, § 2, cl. 5.

<sup>14</sup> *Id.* § 1, cl. 1.

<sup>15</sup> *McGrain v. Daugherty*, 273 U.S. 135, 174, 177 (1927).

<sup>16</sup> U.S. Const. Art. I, § 5, cl. 2.

<sup>17</sup> *See* H. Res. 6 (116th Cong.) (2019) (adopting House Rules for 116th Congress); *see also* Rules of the House of Representatives, 116th Congress (Jan. 11, 2019) (House Rules), <https://perma.cc/X5ZQ-ZZWD>.

various standing committees, including the Judiciary Committee, and delegate to each committee “jurisdiction and related functions.”<sup>18</sup>

19. The Judiciary Committee’s jurisdiction includes impeachment.<sup>19</sup> Resolutions that call for impeachment of eligible officials are normally referred by the Speaker of the House to the Judiciary Committee,<sup>20</sup> and are eligible for consideration pursuant to applicable House and Committee Rules.<sup>21</sup> The House also may choose to direct a particular manner for investigating grounds for impeachment, and in such instances it has voted to refer such investigations to the Judiciary Committee.<sup>22</sup> Whether by direct referral to the Judiciary Committee or referral

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<sup>18</sup> House Rule X.1.

<sup>19</sup> *Jefferson’s Manual*, H. Doc. 114-192 § 605, at 321 (2017) (“[R]esolutions ... that directly call for the impeachment of an officer have been referred to the Committee on the Judiciary[.]”). As *Jefferson’s Manual* explains, “[i]n the House various events have been credited with setting an impeachment in motion,” including “charges made on the floor”; “a resolution introduced by a Member and referred to a committee”; or “facts developed and reported by an investigating committee of the House.” *Id.* § 603 at 319.

<sup>20</sup> *See, e.g.*, 165 Cong. Rec. H211 (daily ed. Jan. 3, 2019) (referral to the Judiciary Committee of H. Res. 13, 116th Cong., impeaching President Trump); 163 Cong. Rec. H9376 (daily ed. Nov. 15, 2017) (referral to the Judiciary Committee of H. Res. 621, 115th Cong., impeaching President Trump); 163 Cong. Rec. H5759 (daily ed. July 12, 2017) (referral to the Judiciary Committee of H. Res. 438, 115th Cong., impeaching President Trump); 162 Cong. Rec. H4926 (daily ed. July 13, 2016) (referral to the Judiciary Committee of H. Res. 828, 114th Cong., impeaching John Andrew Koskinen, Commissioner of the Internal Revenue Service); 135 Cong. Rec. 2553 (1989) (referral to the Judiciary Committee of H. Res. 87, 101st Cong., impeaching Judge Walter Nixon); 133 Cong. Rec. 6522 (1987) (referral to the Judiciary Committee of H. Res. 128, 100th Cong., impeaching Judge Alcee Hastings).

<sup>21</sup> *See* House Rule XI.2(b) (“Each ... committee shall meet for the consideration of a bill or resolution pending before the committee or the transaction of other committee business on all regular meeting days fixed by the committee[.]”); House Rule XI.2(c)(1) (“The chair of each standing committee may call and convene, as the chair considers necessary, additional and special meetings of the committee for the consideration of a bill or resolution pending before the committee or for the conduct of other committee business, subject to such rules as the committee may adopt.”); *see also* Rule II(c), Rules of the House Committee on the Judiciary for the 116th Congress (Jan. 24, 2019) (Judiciary Committee Rules) (“The Chairman shall furnish each Member of the Committee or Subcommittee with the date, place, and a list of bills and subjects to be considered at a Committee or Subcommittee meeting.”).

<sup>22</sup> *See, e.g.*, H. Res. 581, 105th Cong. (1998) (instructing the Judiciary Committee to

following a vote, “[a]ll impeachments to reach the Senate since 1900 have been based on resolutions reported by the Committee on the Judiciary.”<sup>23</sup>

20. The Judiciary Committee’s legislative and oversight jurisdiction includes, among other subjects, “[c]riminal law enforcement and criminalization,”<sup>24</sup> including the criminal statutes relevant to the Special Counsel’s investigation into the President’s conduct.<sup>25</sup> The Judiciary Committee’s jurisdiction also encompasses “[t]he judiciary and judicial proceedings, civil and criminal”; “presidential succession”; and “[s]ubversive activities affecting the internal security of the United States.”<sup>26</sup> Among other matters, the Judiciary Committee exercises jurisdiction with respect to legislation regarding independent counsels and special counsels.<sup>27</sup> The House Rules further mandate that “[a]ll bills, resolutions, and other matters relating to” subjects within the Judiciary Committee’s jurisdiction be referred to the Judiciary Committee for its consideration.<sup>28</sup>

21. In addition, as a standing committee, the Judiciary Committee has “general oversight responsibilities,” including with respect to the “operation of Federal agencies and

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investigate grounds for impeachment against President Clinton); H. Res. 803, 93d Cong. (1974) (instructing the Judiciary Committee to investigate grounds for impeachment against President Nixon).

<sup>23</sup> Charles W. Johnson et al., *House Practice: A Guide to the Rules, Precedents, and Procedures of the House*, Ch. 27 § 6, at 615 (2017).

<sup>24</sup> House Rule X.1(l)(7).

<sup>25</sup> See, e.g., 18 U.S.C. §§ 1503, 1505, 1512(b), (c)(2) (obstruction of justice, witness tampering, and related offenses).

<sup>26</sup> House Rule X.1(l).

<sup>27</sup> See, e.g., H. Rep. No. 103-224 (1993) (describing the Judiciary Committee’s consideration of legislation to reauthorize the independent counsel statute); 165 Cong. Rec. H208 (daily ed. Jan. 3, 2019) (referral of H.R. 197, the “Special Counsel Independence and Integrity Act,” 116th Cong., to the Judiciary Committee).

<sup>28</sup> House Rule X.1, XII.2.



entities” within its areas of jurisdiction.<sup>29</sup> As such, the Judiciary Committee exercises oversight regarding the structure and functions of the DOJ and the Federal Bureau of Investigation (FBI).<sup>30</sup> The Judiciary Committee is charged with, among other responsibilities, reviewing “on a continuing basis ... the application, administration, execution, and effectiveness of laws and programs” within its jurisdiction.<sup>31</sup> The Judiciary Committee must determine whether such laws are being “implemented and carried out in accordance with the intent of Congress,” and if there are “any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation.”<sup>32</sup>

22. The House Rules empower the Judiciary Committee to “conduct at any time such investigations and studies as it considers necessary or appropriate in the exercise of its responsibilities” over matters within its jurisdiction.<sup>33</sup> To aid these inquiries, the Judiciary Committee is authorized to issue subpoenas for testimony and documents.<sup>34</sup>

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<sup>29</sup> House Rule X.2(a), (b)(1)(B).

<sup>30</sup> See, e.g., *Oversight of the U.S. Department of Justice: Hearing Before the H. Comm. on the Judiciary*, 116th Cong. (Feb. 8, 2019) (oversight hearing conducted with Matthew Whitaker, Acting Attorney General, DOJ); *Oversight of the Federal Bureau of Investigation: Hearing before the H. Comm. on the Judiciary*, 115th Cong. (Dec. 7, 2017) (oversight hearing with Christopher Wray, Director, FBI).

<sup>31</sup> House Rule X.2(b)(1).

<sup>32</sup> *Id.*

<sup>33</sup> House Rule XI.1(b)(1).

<sup>34</sup> See House Rule XI.2(m)(1)(B); House Rule XI.2(m)(3)(A)(i); see also Judiciary Committee Rule IV(a) (“A subpoena may be authorized and issued by the Chairman, in accordance with clause 2(m) of rule XI of the House of Representatives, in the conduct of any investigation or activity or series of investigations or activities within the jurisdiction of the Committee, following consultation with the Ranking Minority Member.”).

## II. FACTUAL ALLEGATIONS

### A. The Special Counsel's Report Exposes Compelling Evidence Of Presidential Wrongdoing

23. The Judiciary Committee's urgent need for McGahn's testimony arises out of evidence uncovered in the Special Counsel's investigation and detailed in the Report. That Report describes unprecedented interference by Russia in the 2016 Presidential election and attempts by the President of the United States to undermine an investigation into that interference, including into whether individuals associated with his Presidential campaign coordinated with the Russian government.

24. On May 17, 2017, pursuant to DOJ regulations,<sup>35</sup> Mueller was appointed as Special Counsel to investigate "the Russian government's efforts to interfere in the 2016 presidential election," including "any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump"; any other matters "that arose or may arise directly from the investigation"; and "federal crimes committed in the course of, and with intent to interfere with, the Special Counsel's investigation, such as perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses."<sup>36</sup>

25. On March 22, 2019, Special Counsel Mueller completed his investigation and provided a written report to Attorney General Barr.<sup>37</sup> On April 18, 2019, Attorney General Barr released a redacted version of the Report simultaneously to Congress and the public. The Report is divided into two volumes. Volume I describes the evidence that Russia interfered in our

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<sup>35</sup> 28 C.F.R. §§ 600 *et seq.* (2019).

<sup>36</sup> Office of the Deputy Attorney General, Order No. 3915-2017, *Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election and Related Matters* (May 17, 2017); 28 C.F.R. § 600.4 (2019).

<sup>37</sup> Exhibit D, Letter from William P. Barr, Att'y Gen., U.S. Dep't of Justice, to Jerrold Nadler, Chairman, H. Comm. on the Judiciary, *et al.* (Mar. 22, 2019).

election to benefit President Trump, and that the Trump Campaign welcomed that interference. Volume II documents that, once elected, President Trump took a series of actions to undermine multiple investigations into Russia's interference and his own possible misconduct. As the Report recognizes, Congress is currently the sole body that can hold the President accountable for these actions.

**1. The Report Describes Russia's Interference In The 2016 Presidential Election And How The Trump Campaign Welcomed Russia's Assistance**

***a. Russia Interferes In The 2016 Presidential Election To Benefit Then-Candidate Trump***

26. The Special Counsel's Report describes a serious attack by a hostile foreign government on our Nation's 2016 Presidential election, executed "in sweeping and systematic fashion" and intended to benefit the Trump Presidential campaign.<sup>38</sup> Among other things, the Russian government, through its main intelligence directorate, the GRU, used cyber intrusions (hacking) to steal information from then-candidate Hillary Clinton's campaign and the Democratic National Committee, as well as from "U.S. state and local entities, such as state boards of elections ... , secretaries of state, and county governments," all of which were "involved in the administration of the elections."<sup>39</sup> The Russian-funded Internet Research Agency also used "information warfare" to "sow discord in the U.S. political system," with a "targeted operation that by early 2016 favored candidate Trump and disparaged candidate Clinton."<sup>40</sup> By the end of the 2016 election, the Internet Research Agency had the ability to reach "tens of millions of U.S. persons" to further that agenda.<sup>41</sup> The evidence obtained by the

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<sup>38</sup> *Report*, Vol. I at 1; *see also id.* Vol. I at 1-2.

<sup>39</sup> *Id.* Vol. I at 36, 50.

<sup>40</sup> *Id.* Vol. I at 4.

<sup>41</sup> *Id.* Vol. I at 25-26.

Special Counsel relating to Russia's interference resulted in criminal indictments of more than a dozen defendants.<sup>42</sup>

***b. The Trump Campaign Welcomes Russia's Interference And Maintains Significant Contacts With Russian Nationals***

27. The Report documents that the Trump Campaign both welcomed Russia's interference and did not report the campaign's repeated contacts with Russian-affiliated individuals to law enforcement. The Report assesses that the Russian government perceived that "it would benefit from a Trump presidency," and the Trump Campaign expected that "it would benefit electorally from information stolen and released through Russian efforts."<sup>43</sup>

28. The Report discusses several instances in which then-candidate Trump publicly encouraged Russian interference efforts. On July 27, 2016, for example, then-candidate Trump declared at a public rally: "Russia, if you're listening, I hope you're able to find the 30,000 emails that are missing. I think you will probably be rewarded mightily by our press."<sup>44</sup> This was "apparently a reference to emails ... stored on a personal server that candidate Clinton had used while serving as Secretary of State. Within approximately five hours of Trump's statement, GRU officers targeted for the first time Clinton's personal office."<sup>45</sup> Thereafter, then-candidate Trump began publicly praising WikiLeaks, including after WikiLeaks released stolen emails damaging to the Clinton Campaign. For instance, on October 7, 2016, the *Washington Post* published an *Access Hollywood* video that depicted Trump years earlier in a way that was widely expected to be damaging to his campaign. Less than an hour after the video's release, WikiLeaks released emails stolen from Clinton's campaign chairman, John Podesta, that were

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<sup>42</sup> *Id.* Vol. I at 14 n.4; *see also id.* Vol. I at 174-75.

<sup>43</sup> *Id.* Vol. I at 1-2.

<sup>44</sup> *Id.* Vol. I at 49.

<sup>45</sup> *Id.*

harmful to Clinton’s campaign.<sup>46</sup> In response, on October 10, 2016, then-candidate Trump tweeted: “This just came out. WikiLeaks! I love WikiLeaks!” and later: “This WikiLeaks stuff is unbelievable. It tells you the inner heart, you gotta read it,” and “[b]oy, I love reading those WikiLeaks.”<sup>47</sup> During the Special Counsel’s July 24, 2019, testimony before the House Permanent Select Committee on Intelligence, Mueller explained that describing these tweets as “‘problematic’ is an understatement,” including because they gave “hope or some boost to what is and should be illegal activity.”<sup>48</sup>

29. The Report also describes evidence suggesting that President Trump knew about upcoming releases of stolen emails in advance. Deputy Campaign Manager Rick Gates, for example, explained to the Special Counsel’s Office that after WikiLeaks had released its first set of stolen emails in July 2016, then-candidate Trump “told Gates that more releases of damaging information would be coming.”<sup>49</sup> WikiLeaks in fact released more emails in October 2016.<sup>50</sup>

30. The Report further recounts that, while Russia was interfering in the 2016 Presidential election and releasing stolen emails, senior members of the Trump Campaign were maintaining significant contacts with Russian nationals and seeking damaging information on candidate Hillary Clinton. For example, in the spring of 2016, Trump Campaign foreign policy adviser George Papadopoulos met repeatedly with Russian officials and was told that Russia had “dirt” on Clinton “in the form of thousands of emails.”<sup>51</sup> Similarly, on June 3, 2016, publicist

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<sup>46</sup> *Id.* Vol. I at 58.

<sup>47</sup> Exhibit E, *Former Special Counsel Robert S. Mueller III on the Investigation into Russian Interference in the 2016 Presidential Election: Hearing Before the H. Permanent Select Comm. on Intelligence*, 116th Cong. (July 24, 2019), Hearing Tr. at 49.

<sup>48</sup> *Id.*

<sup>49</sup> *Report*, Vol. I at 54.

<sup>50</sup> *Id.* Vol. I at 58.

<sup>51</sup> *Id.* Vol. I at 5-6.

Rob Goldstone, on behalf of Russian real estate developers, emailed Donald Trump Jr. to set up a meeting to discuss Russian officials' possession of "some official documents and information that would incriminate Hillary [Clinton] and her dealings with Russia and would be very useful to [Trump Jr.'s] father," which Goldstone conveyed was "part of Russia and its government's support for Mr. Trump."<sup>52</sup> Trump Jr. responded, "if it's what you say I love it."<sup>53</sup> Less than a week later, Trump Jr. and other "senior representatives of the Trump Campaign met in Trump Tower with a Russian attorney expecting to receive derogatory information about Hillary Clinton from the Russian government."<sup>54</sup> Around this same time, Trump Campaign Chairman Paul Manafort was offering private briefings on the campaign to a Russian oligarch<sup>55</sup> and routinely causing internal campaign polling data to be shared with a Russian national who has "ties to Russian intelligence."<sup>56</sup>

31. In total, the Report details well over 100 contacts between individuals associated with the Trump Campaign and Russian nationals or their agents during this period.<sup>57</sup> There is no indication that anyone from the Trump Campaign, including the candidate, reported any of these contacts or offers of foreign assistance to U.S. law enforcement. As Mueller confirmed, reporting such information is something that campaigns "would and should do," including because "knowingly accepting foreign assistance during a Presidential campaign" is a crime.<sup>58</sup>

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<sup>52</sup> *Id.* Vol. I at 113.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* Vol. I at 110.

<sup>55</sup> *Id.* Vol. I at 137.

<sup>56</sup> *Id.* Vol. I at 129; *see id.* at 133-34, 136-37.

<sup>57</sup> *See* Karen Yourish and Larry Buchanan, Mueller Report Shows Depth of Connections Between Trump Campaign and Russians, N.Y. Times (April 19, 2019), <https://perma.cc/756L-CH2J> ("Donald J. Trump and 18 of his associates had at least 140 contacts with Russian nationals and WikiLeaks, or their intermediaries, during the 2016 campaign and presidential transition, according to a New York Times analysis." (emphasis omitted)).

<sup>58</sup> Exhibit E, Hearing Tr. at 30, 88.

**2. The Report Details President Trump's Attempts To Undermine The Investigation Into Russia's Election Interference And His Own Possible Misconduct, Events To Which McGahn Is A Key Witness**

32. In Volume II, the Report describes substantial evidence that President Trump repeatedly attempted to shut down the investigation into Russia's interference in America's 2016 election and to conceal his own involvement and potential misconduct from the public. The Report identifies McGahn, who was the White House Counsel during the relevant time period, as having been involved in or a witness to many of the most egregious instances of possible obstructive conduct and attempted coverup.

33. Specifically, the Report details at least ten separate episodes of potentially obstructive conduct by the President, ranging “from efforts to remove the Special Counsel and to reverse the effect of the Attorney General's recusal; to the attempted use of official power to limit the scope of the investigation”;<sup>59</sup> to demanding that McGahn create a false record;<sup>60</sup> “to direct and indirect contacts with witnesses with the potential to influence their testimony”;<sup>61</sup> to “encourag[ing] witnesses not to cooperate with the investigation.”<sup>62</sup> These incidents were “often carried out through one-on-one meetings in which the President sought to use his official power outside of usual channels.”<sup>63</sup> The most significant of these episodes, all of which McGahn directly witnessed or otherwise was involved in, are set forth in additional detail below.

***a. President Trump Fires His National Security Advisor And The FBI Director During The Russia Investigation***

34. McGahn was a key witness to the events leading up to President Trump's decisions to terminate both National Security Advisor Michael Flynn and FBI Director James

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<sup>59</sup> *Report*, Vol. II at 157.

<sup>60</sup> *Id.* Vol. II at 119.

<sup>61</sup> *Id.* Vol. II at 157.

<sup>62</sup> *Id.* Vol. II at 7.

<sup>63</sup> *Id.* Vol. II at 157.

Comey in apparent attempts to end the investigation into Russian interference, which the FBI was conducting at the time.

35. The Report recounts that, during the transition period before President Trump took office, incoming National Security Advisor Flynn made false statements to Vice President-elect Michael Pence and other incoming Administration officials regarding his communications with the Russian ambassador about “sanctions on Russia for its election interference.”<sup>64</sup> Those incoming officials thereafter made public statements, based on Flynn’s representations to them, that Flynn had not discussed sanctions with the Russian ambassador.<sup>65</sup> During the first week of the new Administration, on January 24, 2017, Flynn also lied to FBI investigators about the discussions. Two days later, DOJ informed McGahn that the statements made by Vice President Pence and others—based on what Flynn had told them—were false, which “put Flynn in a potentially compromised position because the Russians would know he had lied.”<sup>66</sup> “That afternoon, McGahn notified the President” of what he had been told, and explained that Flynn’s false statements to federal investigators could constitute a federal crime.<sup>67</sup> Flynn remained in his position, however, for over two weeks until February 13, 2017, when the President requested his resignation.<sup>68</sup> President Trump told an outside adviser the next day, “[n]ow that we fired Flynn, the Russia thing is over.”<sup>69</sup>

36. McGahn was also a primary witness to President Trump’s efforts to shut down the Russia investigation by attempting to influence, and ultimately removing, Comey. On February

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<sup>64</sup> *Id.* Vol. II at 3.

<sup>65</sup> *Id.* Vol. II at 29-30.

<sup>66</sup> *Id.* Vol. II at 31.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* Vol. II at 38.

<sup>69</sup> *Id.*



14, 2017, the day after Flynn resigned, President Trump “cleared the [Oval Office]” to have a one-on-one meeting with Comey.<sup>70</sup> According to the Report, during this meeting the President told Comey, “I hope you can see your way clear to letting this go, to letting Flynn go.”<sup>71</sup> The Report finds that “[e]vidence does establish that the President connected the Flynn investigation to the FBI’s broader Russia investigation and that he believed, as he told [an adviser], that terminating Flynn would end ‘the whole Russia thing.’”<sup>72</sup>

37. Despite these conversations, on March 20, 2017, Comey testified for the first time publicly before the House Permanent Select Committee on Intelligence that the FBI was continuing to investigate Russia’s interference in the 2016 election, including any coordination between Russia and the Trump Campaign during the interference.<sup>73</sup> Three weeks after that testimony, “the President told senior advisors, including McGahn ... that he had reached out to Comey twice in several weeks. The President acknowledged that McGahn would not approve of the outreach to Comey because McGahn had previously cautioned the President that he should not talk to Comey directly to prevent any perception that the White House was interfering with investigations.”<sup>74</sup> However, President Trump, against the advice of McGahn, repeatedly asked “intelligence community officials,” including Comey, “to push back publicly on any suggestion that the President had a connection to the Russian election-interference effort.”<sup>75</sup> Comey refused

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<sup>70</sup> *Id.* Vol. II at 47.

<sup>71</sup> *Id.* Vol. II at 40.

<sup>72</sup> *See id.* Vol. II at 47.

<sup>73</sup> *Id.* Vol. II at 52-53; *see also* Matthew Rosenberg et al., *Comey Confirms F.B.I. Inquiry on Russia; Sees No Evidence of Wiretapping*, N.Y. Times (Mar. 20, 2017), <https://perma.cc/46WT-TVTC>.

<sup>74</sup> *Report*, Vol. II at 59.

<sup>75</sup> *Id.* Vol. II at 55, 59 (after acknowledging he had reached out to Comey, “[t]he President told McGahn that Comey had indicated the FBI could make a public statement that the President was not under investigation if the Department of Justice approved that action”).

to do so and again confirmed the FBI's investigation into Russian interference and any related coordination with the Trump Campaign during testimony on May 3, 2017, before the Senate Judiciary Committee.

38. Six days later, the President fired Comey and subsequently provided conflicting explanations for his dismissal, some of which the Special Counsel determined were “pretextual.”<sup>76</sup> McGahn was an integral witness to these events. For example, McGahn participated in a May 8, 2017, meeting in which President Trump informed senior White House aides that he “had decided to terminate Comey,” read aloud his draft termination letter—which stated that the President was not personally under investigation—and told his aides that his decision “was not up for discussion.”<sup>77</sup> “In an effort to slow down the decision-making process,” McGahn suggested that that he and other attorneys from the White House Counsel’s Office should discuss the issue with Attorney General Sessions and Deputy Attorney General Rod Rosenstein before the President took action.<sup>78</sup> McGahn and another attorney in fact met with Sessions and Rosenstein to obtain their views, and McGahn was present at another meeting later that day when President Trump asked Rosenstein to draft a memorandum with his recommendation to terminate Comey, and told him to “[p]ut the Russia stuff in the memo.”<sup>79</sup> During a meeting the next day, McGahn and the rest of the White House Counsel’s Office reached a consensus that President Trump’s initial draft termination letter should “not see the light of day” and that it would be better to offer “[n]o other rationales” for Comey’s firing aside from what was in Sessions’s and Rosenstein’s memoranda, which justified Comey’s firing only

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<sup>76</sup> *Id.* Vol. II at 62, 75, 77.

<sup>77</sup> *Id.* Vol. II at 65-66.

<sup>78</sup> *Id.* Vol. II at 66.

<sup>79</sup> *Id.* Vol. II at 66-67.

on the ground that Comey had mishandled the investigation into Hillary Clinton’s use of a private email server.<sup>80</sup>

39. After the White House released an official statement that “President Trump acted based on the clear recommendations of” Sessions and Rosenstein,<sup>81</sup> both “Sessions and Rosenstein ... spoke to McGahn and expressed concern that the White House was creating a narrative that Rosenstein had initiated the decision to fire Comey.”<sup>82</sup> As the Report notes, “[s]ubstantial evidence indicates that the catalyst for the President’s decision to fire Comey” was actually “Comey’s unwillingness to publicly state that the President was not personally under investigation, despite the President’s repeated requests that Comey make such an announcement.”<sup>83</sup> The Report finds evidence indicating that the President took these actions because he “wanted to protect himself from an investigation into his campaign.”<sup>84</sup> Indeed, the day after President Trump fired Comey, the President told Russian officials that he had “faced great pressure because of Russia. That’s taken off.”<sup>85</sup>

***b. President Trump Orders McGahn To Remove The Special Counsel***

40. Once the media began reporting that the Special Counsel was investigating the President for obstruction of justice, President Trump repeatedly sought McGahn’s help to remove Special Counsel Mueller.

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<sup>80</sup> *Id.* Vol. II at 68 (brackets omitted).

<sup>81</sup> *Id.* Vol. II at 69.

<sup>82</sup> *Id.* Vol. II at 72-73.

<sup>83</sup> *Id.* Vol. II at 75.

<sup>84</sup> *Id.* Vol. II at 76.

<sup>85</sup> *Id.* Vol. II at 71; *see also id.* Vol. II at 73 (noting that on May 11, 2017, President Trump told Lester Holt, “I was going to fire regardless of recommendation ... [Rosenstein] made a recommendation. But regardless of recommendation, I was going to fire Comey ... . And in fact, when I decided to just do it, I said to myself—I said, you know, this Russia thing with Trump and Russia is a made-up story”).

41. On June 14, 2017, “the Washington Post published an article stating that the Special Counsel was investigating whether the President had attempted to obstruct justice.”<sup>86</sup> On Saturday, June 17, President Trump twice called McGahn at home to direct him to fire Mueller. During the June 17 calls, the President said to McGahn: “You gotta do this. You gotta call Rod [Rosenstein]. ... Mueller has to go. ... Call me back when you do it.”<sup>87</sup> Those calls were part of a “continuous colloquy” of the President directing McGahn to have Mueller removed, and “a continuous involvement of Don McGahn responding to the President’s entreaties.”<sup>88</sup> After receiving those calls, McGahn “recalled feeling trapped” and “decided he had to resign.”<sup>89</sup> Only after two of President Trump’s senior advisers “urged McGahn not to quit” did he decide to remain.<sup>90</sup> The Report does not explain what changed McGahn’s mind about his resignation.<sup>91</sup>

42. The Report also explains that President Trump “knew that he should not have made those calls to McGahn,” including because “McGahn had specifically told the President that the White House Counsel’s Office—and McGahn himself—could not be involved in pressing” claims that Mueller had “conflicts of interest.”<sup>92</sup> Indeed, before the June 17 calls, the President had urged McGahn to tell DOJ that Mueller had conflicts of interest.<sup>93</sup> McGahn had declined, telling the President that if he wanted to raise that issue he should do so through his

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<sup>86</sup> *Id.* Vol. II at 84.

<sup>87</sup> *Id.* Vol. II at 85-86.

<sup>88</sup> Exhibit A, Hearing Tr. at 54.

<sup>89</sup> *Report*, Vol. II at 86.

<sup>90</sup> *Id.* Vol. II at 87.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* Vol. II at 90.

<sup>93</sup> *Id.* Vol. II at 81.

private attorney—and advising him that this “would ‘look like still trying to meddle in the investigation’” and “would be ‘another fact used to claim obstruction of justice.’”<sup>94</sup>

43. In fact, the Report finds “[s]ubstantial evidence” that the President’s “attempts to remove the Special Counsel were linked to the Special Counsel’s oversight of investigations that involved the President’s conduct—and, most immediately, to reports that the President was being investigated for potential obstruction of justice.”<sup>95</sup>

***c. President Trump Demands That McGahn Create A False Record To Cover Up His Attempt To Fire The Special Counsel***

44. The Report also describes significant measures that President Trump took to conceal this and other misconduct from the public—including directing McGahn to create a false record denying that the President had ordered him to fire Mueller. On January 25, 2018, news reports broke that President Trump had ordered McGahn to have Mueller fired the previous summer.<sup>96</sup> Shortly thereafter, the President—first through his personal counsel and two aides, and then by “personally [meeting] with McGahn in the Oval Office”—“tried to get McGahn” to put out a public statement and “write a letter to the file ‘for [White House] records’” disputing the event.<sup>97</sup> Even when McGahn expressed that he “did not want to issue a statement or create a written record denying facts that [he] believed to be true,” the “President nevertheless persisted and asked McGahn to repudiate facts that McGahn had repeatedly said were accurate.”<sup>98</sup>

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<sup>94</sup> *Id.* Vol. II at 81-82 (quoting Donaldson’s notes) (brackets omitted); *see also id.* Vol. II at 90 (“The evidence indicates that news of the obstruction investigation prompted the President to call McGahn and seek to have the Special Counsel removed.”).

<sup>94</sup> *Id.* Vol. II at 89.

<sup>95</sup> *Id.* Vol. II at 89.

<sup>96</sup> *Id.* Vol. II at 113.

<sup>97</sup> *Id.* Vol. II at 113, 115 (quoting statement by staff secretary Robert Porter).

<sup>98</sup> *Id.* Vol. II at 119.

45. During the President’s meeting with McGahn about this issue, which Chief of Staff John Kelly described as “‘a little tense,’” the President also asked McGahn “why he had told [the Special Counsel] that the President had told him to have the Special Counsel removed.”<sup>99</sup> McGahn “responded that he had to and that his conversations with the President were not protected by attorney-client privilege.”<sup>100</sup> The President further asked, “[w]hat about these notes? Why do you take notes? Lawyers don’t take notes. I never had a lawyer who took notes,” to which McGahn responded that he kept notes because he is a “real lawyer and explained that notes create a record and are not a bad thing.”<sup>101</sup>

46. The Report, as confirmed by Mueller’s testimony to the Judiciary Committee, finds “substantial evidence support[ing] McGahn’s account that the President had directed him to have the Special Counsel removed,” and, moreover, that the President’s direction to McGahn to deny those facts was an effort “to deflect or prevent further scrutiny of the President’s conduct towards the investigation.”<sup>102</sup>

***d. President Trump Urges McGahn To Pressure Attorney General Sessions To Transgress Federal Ethics Rules In An Effort To Limit The Scope Of The Special Counsel’s Investigation***

47. The Report documents McGahn’s role in other efforts by President Trump to interfere in the Russia investigation. For example, on March 2, 2017, the President enlisted McGahn to tell Attorney General Sessions “not to recuse himself from the Russia investigation.”<sup>103</sup> When that effort failed, “McGahn was called into the Oval Office,” where the President personally “expressed anger at McGahn about the recusal” and stated, “I don’t have a

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<sup>99</sup> *Id.* Vol. II at 117.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* (internal citations omitted).

<sup>102</sup> *Id.* Vol. II at 118, 120; *see also* Exhibit A, Hearing Tr. at 70, 79-80.

<sup>103</sup> *Report*, Vol. II at 49.

lawyer.”<sup>104</sup> The President subsequently “spoke with Sessions about reversing his recusal so that he could take over the Russia investigation and begin an investigation and prosecution of Hillary Clinton.”<sup>105</sup> On two other occasions, the President asked his former campaign manager, Corey Lewandowski, to deliver a message to “Sessions to limit the Special Counsel investigation to future election interference,” as opposed to investigating the President or his campaign’s conduct.<sup>106</sup>

48. According to the Report, “at least one purpose of the President’s conduct toward Sessions was to have Sessions assume control over the Russia investigation and supervise it in a way that would restrict its scope.”<sup>107</sup> More specifically, the Report details evidence that the President believed that, if Sessions assumed control of the investigation, he “would play a protective role and could shield the President from the ongoing Russia investigation.”<sup>108</sup>

49. When the President asked Sessions to reverse his decision to recuse himself, he was aware that DOJ had determined that federal ethics rules prohibited Sessions’s involvement in the investigation; indeed, as DOJ publicly explained, those regulations state that a DOJ attorney “should not participate in investigations” that pertain to individuals “with whom the attorney has a political or personal relationship,” and Sessions had participated in the Trump

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<sup>104</sup> *Id.* Vol. II at 50.

<sup>105</sup> *See, e.g., id.* Vol. II at 112 (“The President had previously and unsuccessfully sought to have Sessions publicly announce that the Special Counsel investigation would be confined to future election interference.”).

<sup>106</sup> *Id.* Vol. II at 5.

<sup>107</sup> *Id.* Vol. II at 112.

<sup>108</sup> *Id.* Vol. II at 113. President Trump’s own public statements confirm the Special Counsel’s findings. On July 29, 2017, the President told the *New York Times*: “Sessions should have never recused himself, and if he was going to recuse himself, he should have told me before he took the job, and I would have picked somebody else.” Peter Baker et al., *Citing Recusal, Trump Says He Wouldn’t Have Hired Sessions*, N.Y. Times (July 19, 2017), <https://perma.cc/E9UU-SMV8>.

Campaign,<sup>109</sup> and even appeared at events on behalf of then-candidate Trump.<sup>110</sup> The President also ignored previous warnings from McGahn that “he should not communicate directly with the Department of Justice to avoid the perception or reality of political interference in law enforcement.”<sup>111</sup>

***e. President Trump Attempts To Influence Witnesses Or Prevent Them From Cooperating With The Special Counsel’s Investigation***

50. The Report describes evidence—including testimony from McGahn—that the President’s efforts to obstruct the investigation also included attempts to prevent witnesses from cooperating with the Special Counsel or otherwise influence their testimony. For example, McGahn told the Special Counsel that the “President discussed with aides whether and in what way [his former Campaign Chairman] Manafort might be cooperating with the Special Counsel’s investigation, and whether Manafort knew any information that would be harmful to the President.”<sup>112</sup> The Report then discusses evidence suggesting that President Trump “intended to encourage Manafort to not cooperate with the government.”<sup>113</sup> Indeed, Manafort told his former deputy, Gates, not to plead to any charges, because “he had talked to the President’s personal counsel and they [are] ‘going to take care of us.’”<sup>114</sup>

51. The Report recounts other evidence that, similarly, could “support an inference that the President used inducements in the form of positive messages in an effort to get [the

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<sup>109</sup> Exhibit F, Department of Justice Issues Statement on Testimony of Former FBI Director James Comey, U.S. Dep’t of Justice (June 8, 2017) (citing 28 C.F.R. 45.2 (2019)).

<sup>110</sup> See, e.g., Ashley Parker and Matt Flegenheimer, *Jeff Sessions, Virulent Opponent To 2013 Immigration Bill, Endorses Donald Trump*, N.Y. Times (Feb. 26, 2016), <https://perma.cc/9EDL-ZA5J>; *Trump in Phoenix: 10-point Plan to End Illegal Immigration*, Ariz. Republic (Aug. 31, 2016), <https://perma.cc/5AMK-YVEK>.

<sup>111</sup> *Report*, Vol. II at 33.

<sup>112</sup> *Id.* Vol. II at 123.

<sup>113</sup> *Id.* Vol. II at 132.

<sup>114</sup> *Id.* Vol. II at 123.



President’s former personal attorney Michael] Cohen not to cooperate, and then turned to attacks and intimidation to deter the provision of information or undermine Cohen’s credibility once Cohen began cooperating.”<sup>115</sup> On August 22, 2018, for instance, the day after Cohen pleaded guilty to various campaign-finance violations and other charges, the President stated in a live interview: “[Cohen] makes a better deal when he uses me, like everybody else.”<sup>116</sup>

### **3. President Trump Attacks The Special Counsel’s Investigation And Denies McGahn’s Factual Account**

52. Both before and after the release of the Special Counsel’s Report, the President has sought to cast doubt on the integrity of the Special Counsel’s investigation and has publicly disputed McGahn’s account of the facts.

53. On more than 300 occasions, the President has described the Special Counsel’s investigation as a “Witch Hunt” or a “Hoax.”<sup>117</sup> The President has called the investigation “treason” or “treasonous” more than twenty times,<sup>118</sup> accused the Special Counsel and his team of being “highly conflicted” at least a dozen times,<sup>119</sup> and targeted the FBI investigators and the Special Counsel’s team as “very sick and dangerous people who have committed very serious crimes, perhaps even Spying or Treason.”<sup>120</sup>

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<sup>115</sup> *Id.* Vol. II at 154.

<sup>116</sup> *Id.* Vol. II at 126.

<sup>117</sup> “Witch Hunt,” FactBase (last visited Aug. 6, 2019), <https://perma.cc/7N6N-DTEH> (view live page); “Hoax,” FactBase (last visited Aug. 7, 2019), <https://perma.cc/7BYU-KDAJ> (view live page).

<sup>118</sup> “Treason,” FactBase (last visited Aug. 6, 2019), <https://perma.cc/4AVC-FX4C> (view live page); “Treasonous,” FactBase (last visited Aug. 6, 2019), <https://perma.cc/8VL7-ANE8> (view live page).

<sup>119</sup> “Highly Conflicted,” FactBase (last visited Aug. 6, 2019), <https://perma.cc/U4LN-B8JG> (view live page).

<sup>120</sup> Donald J. Trump (@realDonaldTrump), Twitter (Apr. 19, 2019, 1:47 PM), <https://perma.cc/8AHS-2AC5>.

54. The President also has publicly disputed the evidence described in the Report, focusing his attacks on discrediting McGahn and his crucial interviews with the Special Counsel. For example, shortly after the Report was made public, the President denied McGahn's statements to the Special Counsel, stating, "I never told then White House Counsel Don McGahn to fire Robert Mueller, even though I had the legal right to do so. If I wanted to fire Mueller, I didn't need McGahn to do it, I could have done it myself."<sup>121</sup> He has further attacked McGahn's integrity, tweeting: "I was NOT going to fire Bob Mueller, and did not fire Bob Mueller. In fact, he was allowed to finish his Report with unprecedented help from the Trump Administration. Actually, lawyer Don McGahn had a much better chance of being fired than Mueller. Never a big fan!"<sup>122</sup> And in a televised interview, the President stated: "I was never going to fire Mueller. I never suggested firing Mueller. ... I don't care what [McGahn] says. It doesn't matter."<sup>123</sup> When asked why McGahn would "lie under oath," the President responded: "Because he wanted to make ... himself look like a good lawyer. Or ... he believed it because I would constantly tell anybody that would listen ... that Robert Mueller was conflicted."<sup>124</sup>

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<sup>121</sup> Donald J. Trump (@realDonaldTrump), Twitter (Apr. 25, 2019, 7:47 AM), <https://perma.cc/CLP3-RU9H>; *see also* Philip Rucker et al., *Trump Blames McGahn After Mueller Paints Damning Portrait with Notes from White House Aides*, Wash. Post (Apr. 19, 2019), <https://perma.cc/MS5Z-KVRJ> (President tweeting: "[w]atch out for people that take so-called 'notes,' when the notes never existed until needed," contradicting the testimony of multiple witnesses interviewed by the Special Counsel's Office who described contemporaneous notes including those taken by Annie Donaldson, McGahn's chief of staff).

<sup>122</sup> Donald J. Trump (@realDonaldTrump), Twitter (May 11, 2019, 6:39 PM). <https://perma.cc/6GHX-4ZPU>.

<sup>123</sup> *Transcript: ABC News' George Stephanopoulos' Exclusive Interview with President Trump*, ABC News (June 16, 2019), <https://perma.cc/3WL3-G8J9>.

<sup>124</sup> *Id.*

#### **4. The Special Counsel Declines To Render A Prosecutorial Judgment, Leaving Congress To Address Any Presidential Wrongdoing**

55. One consideration that guided the Special Counsel’s investigation was his determination “not to make a traditional prosecutorial judgment” regarding whether to recommend initiating or declining criminal charges against President Trump for obstruction of justice.<sup>125</sup> The Report explains that this decision derived from DOJ’s legal interpretation barring the indictment of a sitting President, and the resulting “fairness” concerns of accusing the President of a crime when no charges could be brought, leaving the President with no opportunity to vindicate himself in court.<sup>126</sup> Mueller confirmed in his testimony to the Judiciary Committee on July 24, 2019, that he did not make a charging decision “because of [the] OLC opinion stating that you cannot indict a sitting President.”<sup>127</sup> The Report makes clear, however, that if the Special Counsel’s Office “had confidence after a thorough investigation of the facts that the President clearly did not commit obstruction of justice, [it] would so state.”<sup>128</sup>

56. Absent a charging decision from the Special Counsel, while the President remains in office, only Congress can address the Presidential wrongdoing described in the Report. As the Special Counsel recognized, “no person is above the law.”<sup>129</sup> It is therefore up to Congress to hold the President accountable if appropriate after an independent investigation. The Special Counsel recognized as much in his Report, noting that bringing charges against a sitting President could “potentially preempt constitutional processes for addressing presidential

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<sup>125</sup> *Report*, Vol. II at 1.

<sup>126</sup> *Id.* Vol. II at 1-2.

<sup>127</sup> Exhibit A, Hearing Tr. at 109.

<sup>128</sup> *Report*, Vol. II at 2.

<sup>129</sup> *Id.* Vol. II at 8.

misconduct.”<sup>130</sup> In his May 29, 2019, statement to the press, Mueller reaffirmed the notion that Congress is the proper body to respond to the Report and the evidence of potential Presidential misconduct: The “Constitution requires a process other than the criminal justice system to formally accuse a sitting President of wrongdoing.”<sup>131</sup>

**B. The Judiciary Committee Has Commenced An Independent Investigation Into Whether The President Has Engaged In Misconduct And McGahn’s Testimony Is Necessary For The Judiciary Committee To Fulfill Its Constitutional Functions**

57. The House of Representatives has a grave constitutional responsibility to address this serious evidence of potential Presidential misconduct, and the Judiciary Committee is in the process of fulfilling that duty. On March 4, 2019, the Judiciary Committee opened an investigation into allegations of misconduct by the President and his associates. Pursuant to that investigation, the Judiciary Committee is conducting oversight and hearings, including assessing whether to exercise its Article I power to recommend articles of impeachment against the President, including those articles already referred to the Judiciary Committee, and considering significant remedial legislation and amendments to existing laws.<sup>132</sup> But the Judiciary Committee cannot fulfill these constitutional responsibilities without full access to critical evidence, including testimony from McGahn, who was a key witness to many of the most egregious obstructive acts described in the Special Counsel’s Report.

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<sup>130</sup> *Id.* Vol. II at 1 (citing the Impeachment Clause of the Constitution and OLC opinion “discussing [the] relationship between impeachment and criminal prosecution of a sitting President”).

<sup>131</sup> Mueller Public Statement.

<sup>132</sup> *See* 165 Cong. Rec. H211 (daily ed. Jan. 3, 2019) (referral of H. Res. 13, 116th Cong. (2019)); *see also* H. Rep. No. 116-105, at 13 (2019) (purposes of the Committee’s investigation include considering “whether the conduct uncovered may warrant amending or creating new federal authorities” and “whether any of the conduct described in the [Mueller] Report warrants the Committee in taking any further steps under Congress’ Article I power,” including recommendation of “articles of impeachment”).

# **1. The Judiciary Committee’s Independent Investigation Into “Threats To The Rule Of Law,” Including Presidential Misconduct**

58. An independent Judiciary Committee investigation into the conduct described in the Special Counsel’s Report is well underway. Beginning in February 2019, Chairman Nadler and the chairs of other committees with relevant jurisdiction alerted Attorney General Barr of Congress’s need to review the full Report, once completed, as well as the underlying evidence and investigative materials. As the Chairs explained, “because the Department has taken the position that a sitting President is immune from indictment and prosecution, Congress could be the only institution currently situated to act on evidence of the President’s misconduct.”<sup>133</sup>

59. On March 4, 2019, as that evidence began to mount,<sup>134</sup> the Judiciary Committee officially opened a multi-faceted investigation into “threats to the rule of law” that would encompass alleged obstruction of justice, public corruption, and other abuses of power by President Trump, his associates, and members of his Administration. As Chairman Nadler

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<sup>133</sup> See Exhibit G, Letter from Jerrold Nadler, Chairman, H. Comm. on the Judiciary, et al., to William P. Barr, Att’y Gen., U.S. Dep’t of Justice, at 2 (Feb. 22, 2019).

<sup>134</sup> See, e.g., Mark Mazzetti et al., *Intimidation, Pressure and Humiliation: Inside Trump’s Two-Year War on the Investigations Encircling Him*, N.Y. Times (Feb. 19, 2019), <https://perma.cc/7TR6-EN32> (“[Trump] asked whether Geoffrey S. Berman, the United States attorney for the Southern District of New York and a Trump ally, could be put in charge of the widening [hush payment] investigation”); Larry Buchanan & Karen Yourish, *Trump Has Publicly Attacked the Russia Investigation More Than 1,100 Times*, N.Y. Times (Feb. 19, 2019), <https://perma.cc/RNJ5-HH5G> (“The [President’s] attacks ... are part of a strategy to beat back the investigations. They include statements made on Twitter, in official speeches, at rallies and during news media interviews and other press events.”); Matt Zapposky et al., *Cohen Tells Congress Trump Knew About WikiLeaks’ Plans, Directed Hush-Money Payments*, Wash. Post (Feb. 27, 2019), <https://perma.cc/VPV7-TUDS> (Cohen described hush money payments, which he admitted “violated campaign finance laws,” and he “emphasized that the ‘coverup’ of that crime continued when Trump was president.”).

explained, “[i]nvestigating these threats to the rule of law is an obligation of Congress and a core function of the House Judiciary Committee.”<sup>135</sup>

60. On March 14, 2019, the House of Representatives approved H. Con. Res. 24, calling for the release to Congress of the full Report, once completed, by a vote of 420-0.<sup>136</sup> On April 18, 2019, the Judiciary Committee issued a subpoena for the Report and underlying evidence and investigative materials.<sup>137</sup>

61. When Attorney General Barr failed to comply with the Judiciary Committee’s subpoena for the full Report and underlying materials, the Judiciary Committee voted on May 8, 2019, to recommend that the Attorney General be held in contempt of Congress.<sup>138</sup> In its accompanying report, the Judiciary Committee detailed the purposes of its investigation and need for the materials:

(1) [I]nvestigating and exposing any possible malfeasance, abuse of power, corruption, obstruction of justice, or other misconduct on the part of the President or other members of his Administration; (2) considering whether the conduct uncovered may warrant amending or creating new federal authorities, including among other things, relating to election security, campaign finance, misuse of electronic data, and the types of obstructive conduct that the Mueller Report describes; and (3) considering whether any of the conduct described in the Special Counsel’s Report warrants the Committee in taking any further steps under Congress’ Article I powers. That includes whether to approve articles of impeachment with respect to the President or any other Administration official[.]<sup>139</sup>

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<sup>135</sup> Press Release, H. Comm. on the Judiciary, *House Judiciary Committee Unveils Investigation Into Threats Against the Rule of Law* (Mar. 4, 2019), <https://perma.cc/MPM8-3MAA>.

<sup>136</sup> Roll No. 125, 116th Cong. (Mar. 14, 2016).

<sup>137</sup> See Exhibit H, Subpoena from the Judiciary Committee to William P. Barr, Att’y Gen., U.S. Dep’t of Justice (Apr. 18, 2019); see also Exhibit I, Letter from Jerrold Nadler, Chairman, H. Comm. on the Judiciary, et al., to William P. Barr, Att’y Gen., U.S. Dep’t of Justice, at 2-3 (Apr. 1, 2019) (explaining Congress’s need for these materials).

<sup>138</sup> H. Rep. No. 116-105, at 17.

<sup>139</sup> H. Rep. No. 116-105, at 13. The Judiciary Committee has stressed its authority and the importance of its investigation on many other occasions. See, e.g., Exhibit J, Letter from Jerrold Nadler, Chairman, H. Comm. on the Judiciary, et al., to William P. Barr, Att’y Gen., U.S.

62. Beginning in June 2019, the Judiciary Committee convened a series of hearings to facilitate its investigation, including to assess the specific evidence of Presidential obstruction documented in the Report and the constitutional processes for addressing such Presidential misconduct.<sup>140</sup> Chairman Nadler has explained that, in connection with this investigation, “[t]he Committee seeks key documentary evidence and intends to conduct hearings with Mr. McGahn and other critical witnesses testifying to determine whether the Committee should recommend articles of impeachment against the President or any other Article I remedies, and if so, in what form.”<sup>141</sup> He also stressed that this evidence is necessary for the Judiciary Committee to consider “whether the conduct uncovered may warrant amending or creating new federal authorities.”<sup>142</sup> Indeed, numerous bills related to the issues identified in the Report and to which

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Dep’t of Justice, at 1 (Mar. 22, 2019); Exhibit K, Letter from Jerrold Nadler, Chairman, H. Comm. on the Judiciary, et al., to Pat A. Cipollone, Counsel to the President, at 1 (Mar. 22, 2019); Exhibit L, Letter from Jerrold Nadler, Chairman, H. Comm. on the Judiciary, et al., to William P. Barr, Att’y Gen., U.S. Dep’t of Justice, at 1-2 (Mar. 25, 2019); Exhibit M, Letter from Nancy Pelosi, Speaker, House of Representatives, et al., to William P. Barr, Att’y Gen., U.S. Dep’t of Justice, at 1 (Apr. 19, 2019); Exhibit N, Letter from Jerrold Nadler, Chairman, H. Comm. on the Judiciary, to William P. Barr, Att’y Gen., U.S. Dep’t of Justice, at 3 (May 3, 2019); Exhibit II, Letter from Jerrold Nadler, Chairman, H. Comm. on the Judiciary to William A. Burck (May 7, 2019) (responding to Exhibit JJ, Letter from William A. Burck to Jerrold Nadler, Chairman, H. Comm. on the Judiciary (May 7, 2019)).

<sup>140</sup> See, e.g., *Lessons from the Mueller Report: Presidential Obstruction and Other Crimes: Hearing Before the H. Comm. on the Judiciary*, 116th Cong. (June 10, 2019); *Lessons from the Mueller Report, Part II: Bipartisan Perspectives: Hearing Before the H. Comm. on the Judiciary*, 116th Cong. (June 20, 2019); Exhibit O, *Lessons from the Mueller Report, Part III: “Constitutional Processes for Addressing Presidential Misconduct”: Hearing Before the H. Comm. on the Judiciary*, 116th Cong. (July 12, 2019) (statement of Rep. Nadler, Chairman, H. Comm. on the Judiciary); see generally Exhibit A, Hearing Tr.

<sup>141</sup> Exhibit P, Memorandum from Jerrold Nadler, Chairman, H. Comm. on the Judiciary, to Members of the Committee on the Judiciary, at 3 (July 11, 2019).

<sup>142</sup> *Id.* at 2.

McGahn's testimony would be relevant have been introduced in the House and referred, pursuant to House Rules X.1 and XII.2, to the Judiciary Committee for consideration.<sup>143</sup>

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<sup>143</sup> These include:

- Special Counsel Independence and Integrity Act, H.R. 197, 116th Cong. (2019) (limiting the removal of a special counsel only for cause and only by personal action of an Attorney General confirmed by the Senate);
- Special Counsel Reporting Act, H.R. 1357, 116th Cong. (2019) (requiring a special counsel to submit a periodic report to Congress and requiring reports upon the removal of the special counsel);
- Special Counsel Transparency Act, H.R. 1356, 116th Cong. (2019) (requiring the Attorney General to provide a written explanation to Congress for any material classified or otherwise not made available to the public from a report by the special counsel and requiring the special counsel to take all steps not prohibited by law to disclose to Congress any information he or she believes should be disclosed as part of the oversight role of Congress);
- Trusted, Reliable, Unquestioned Method of Procedure for Special Counsel Appointment, Limitations, and Powers Act of 2019, H.R. 47, 116th Cong. (2019) (providing that only the Attorney General may remove or discipline the Special Counsel and only for good cause);
- Presidential Pardon Transparency Act, H.R. 1348, 116th Cong. (2019) (requiring the Attorney General within three days of a presidential reprieve or pardon to publish in the Federal Register and on the official website of the President the name of the person pardoned, the date on which the reprieve or pardon issued, and the full text of the reprieve or pardon);
- Abuse of the Pardon Prevention Act, H.R. 1627, 116th Cong. (2019) (requiring the Attorney General to submit to Congress all investigative materials related to an offense for which the President pardons an individual if the offense arises from an investigation in which the President, or a relative of the President, is a target, subject, or witness);
- Security from Political Interference in Justice Act of 2019, H.R. 3380, 116th Cong. (2019) (requiring the White House and DOJ to log certain communications relating to criminal and civil investigations and to disclose those logs to Congress, DOJ's Inspector General, and DOJ's Office of Professional Responsibility);
- Defending Elections against Trolls from Enemy Regimes Act, H.R. 3442, 116th Cong. (2019) (amending the Immigration and Nationality Act to provide that aliens who engage in improper election interference are inadmissible and deportable); and



63. On July 24, 2019, the House adopted H. Res. 507 (116th Cong.) (2019),<sup>144</sup> which provides:

That the House of Representatives ratifies and affirms all current and future investigations, as well as all subpoenas previously issued or to be issued in the future, by any standing or permanent select committee of the House, pursuant to its jurisdiction as established by the Constitution of the United States and rules X and XI of the Rules of the House of Representatives, concerning or issued directly or indirectly to—

- (1) the President in his personal or official capacity;
- (2) his immediate family, business entities, or organizations;
- (3) the Office of the President;
- (4) the Executive Office of the President;
- (5) the White House;
- (6) any entity within the White House;
- (7) *any individual currently or formerly employed by or associated with the White House;*
- (8) any Federal or State governmental entity or current or former employee or officer thereof seeking information involving, referring, or related to any individual or entity described in paragraphs (1) through (7); or
- (9) any third party seeking information involving, referring, or related to any individual or entity described in paragraphs (1) through (7).<sup>145</sup>

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- Duty to Report Act, H.R. 2424, 116th Cong. (2019) (requiring a political committee and certain individuals to report to the FBI an offer of a prohibited contribution, donation, expenditure, or disbursement from a foreign national).

<sup>144</sup> See H. Res. 509, § 3 (116th Cong.) (2019) (“House Resolution 507 is hereby adopted.”).

<sup>145</sup> H. Res. 507 (emphasis added).

**2. The Judiciary Committee's Specific Need For McGahn's Testimony To Conduct An Independent Assessment Of The President's Misconduct**

64. McGahn's testimony is critical to the Judiciary Committee's independent assessment of President Trump's conduct as described in the Special Counsel's Report. Given McGahn's central role as a witness to the President's wide-ranging potentially obstructive conduct, the Judiciary Committee cannot fulfill its constitutional legislative, investigative, and oversight responsibilities—including its consideration of whether to recommend articles of impeachment—without hearing from him.

65. As discussed above, McGahn witnessed or participated in events relevant to nearly all of the most egregious episodes of possible Presidential obstruction and his statements to the Special Counsel's Office are mentioned in the Report more than 160 times. Accordingly, McGahn is uniquely situated to answer questions critical to the Judiciary Committee's investigation regarding the President's efforts to end or otherwise interfere with the Special Counsel's investigation, as well as the President's attempts to conceal that conduct. McGahn can give a firsthand account of his discussions with President Trump and other White House aides about the President's actions and their reactions to them. In addition, McGahn was responsible for facilitating communications between the White House and DOJ, and advising the President on the propriety of such communications.<sup>146</sup> Further, McGahn can explain the extent to which he raised concerns about the President's behavior to others in the White House or to DOJ personnel, and how or whether the President responded to these concerns. McGahn also was present when President Trump inquired about the status of certain witnesses' cooperation with

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<sup>146</sup> For example, on January 27, 2017, McGahn wrote a memorandum to White House Staff governing communications restrictions between the White House and personnel at DOJ. *See* Exhibit Q, Memorandum from Donald F. McGahn II, Counsel to the President, to White House Staff (Jan. 27, 2017).

the government and can accordingly shed additional light on the President's conduct and potential attempts to influence their testimony.<sup>147</sup>

66. In addition, McGahn's testimony would provide significant evidence of the President's motivations for his actions. McGahn's firsthand account of the specific words, tone, emotional state, body language, and other actions of the President when he instructed McGahn to have Special Counsel Mueller fired<sup>148</sup>—and then when the President ordered McGahn to create a document falsely contradicting a press account of the incident<sup>149</sup>—would be of critical aid to the Judiciary Committee in assessing the President's intent, including the extent to which the President may have used his position to intimidate his subordinates even after they raised objections about the propriety of his actions. Because the President refused to sit for an interview or answer written questions related to the investigation into obstructive conduct, McGahn's testimony regarding the context and severity of these events recounted in the Report is particularly important.

67. Finally, because President Trump has disputed significant portions of these events, has openly accused McGahn of fabricating facts, and has made claims that conflict with other facts gathered by the Special Counsel during the investigation, the Judiciary Committee must hear from McGahn directly. The Judiciary Committee has an urgent interest in resolving any factual disputes, including understanding McGahn's responses to the President's recent allegations about him, and assessing McGahn's credibility as a witness to these now-disputed events.

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<sup>147</sup> See *supra* II(A)(2)(e) (citing *Report*, Vol. II at 123).

<sup>148</sup> *Report*, Vol. II at 85-86.

<sup>149</sup> *Id.* Vol. II at 115-16.

68. For all of these reasons, live testimony from McGahn is essential to providing a complete and independent understanding of the facts and resolving any conflicting accounts of the evidence. Indeed, the Supreme Court has long recognized the importance of live testimony for such purposes, including the necessity of cross-examining a witness in person, “the greatest legal engine ever invented for the discovery of truth.”<sup>150</sup> Mueller similarly affirmed that “the testimony of [a] witness[] goes to the heart of just about any criminal case.”<sup>151</sup>

### **3. The Judiciary Committee’s Unsuccessful Attempts To Reach An Accommodation With McGahn**

#### ***a. Efforts To Secure McGahn’s Testimony***

69. In an attempt to avoid the need to bring this lawsuit, the Judiciary Committee has repeatedly tried to reach an accommodation to secure McGahn’s testimony. This effort has not succeeded and has resulted in a stalemate.

70. Upon opening its investigation, on March 4, 2019, the Judiciary Committee issued voluntary document requests to McGahn, along with a number of other witnesses it believed to possess relevant information.<sup>152</sup> On March 18, 2019, private counsel for McGahn notified the Judiciary Committee that he had forwarded the requests to the Trump Campaign and the White House.<sup>153</sup>

71. On April 3, 2019, when the White House did not respond to the Judiciary Committee’s voluntary document request to McGahn and others, the Judiciary Committee adopted a Resolution authorizing the issuance of subpoenas in connection with its investigation,

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<sup>150</sup> *California v. Green*, 399 U.S. 149, 158 (1970).

<sup>151</sup> Exhibit E, Hearing Tr. at 57.

<sup>152</sup> Exhibit R, Letter from Jerrold Nadler, Chairman, H. Comm. on the Judiciary, to Donald F. McGahn II, at 1 (Mar. 4, 2019).

<sup>153</sup> Exhibit S, Letter from William A. Burck to Jerrold Nadler, Chairman, H. Comm. on the Judiciary (Mar. 18, 2019).

including the McGahn Subpoena.<sup>154</sup> Chairman Nadler did not issue the subpoenas at that time in order to allow those subject to the authorized subpoenas, including McGahn, the opportunity to provide the materials voluntarily.

72. On April 22, 2019, when the Judiciary Committee still had not received a single document in response to its requests, Chairman Nadler issued the McGahn Subpoena with a return date for McGahn's testimony on May 21, 2019.<sup>155</sup>

73. On May 15, 2019, the White House responded to the Judiciary Committee's March 4 voluntary requests, stating that "the appropriate course is for the Committee to discontinue its inquiry discussed in the March 4 letter," and refusing to provide any documents at that time.<sup>156</sup>

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<sup>154</sup> Exhibit T, *Markup of Resolution Authorizing Issuance of Subpoenas Before the H. Comm. on the Judiciary*, 116th Cong. (Apr. 3, 2019).

<sup>155</sup> Exhibit U, Subpoena from Judiciary Committee to Donald F. McGahn II (Apr. 22, 2019). The McGahn Subpoena additionally sought documents in McGahn's possession, custody, or control by May 7, 2019. The Judiciary Committee has engaged in extensive negotiations with the White House regarding McGahn's document production to allow the Judiciary Committee to review these documents, which are also in the possession of DOJ. The Judiciary Committee and the White House reached an accommodation whereby the Judiciary Committee will be provided the opportunity to review these documents on a rolling basis at specific times designated by DOJ but will not be able to retain them or disclose the contents. On July 26, the Judiciary Committee confirmed its acceptance of that agreement, and, on August 1, the White House said that it would shortly be in touch on scheduling for the document review. Accordingly, this Complaint addresses and seeks enforcement of the McGahn Subpoena only as it relates to McGahn's testimony.

<sup>156</sup> Exhibit V, Letter from Pat A. Cipollone, Counsel to the President, to Jerrold Nadler, Chairman, H. Comm. on the Judiciary, at 3-4 (May 15, 2019) (stating that if "the Committee intends to continue its inquiry, it would greatly advance that process if the Committee were to narrow the scope of the requests in the March 4 letter and articulate the legislative purpose and legal basis supporting each of the remaining requests"); *see* Exhibit KK, Letter from Jerrold Nadler, Chairman, H. Comm. on the Judiciary to Letter to Pat A. Cipollone, Counsel to the President (May 16, 2019) (responding, in part, to Exhibit V).

74. On May 17, 2019, Chairman Nadler wrote to McGahn, noting that his presence before the Judiciary Committee on May 21, 2019, was legally required pursuant to the April 22 subpoena.<sup>157</sup> The letter explained that the Judiciary Committee intended “to focus on the very topics covered in the Special Counsel’s Report,” over which “there can be no valid assertion of executive privilege.”<sup>158</sup>

75. On May 20, 2019, the afternoon before McGahn’s scheduled appearance, White House Counsel Pat Cipollone wrote to Chairman Nadler. Cipollone’s letter stated that DOJ had advised that “McGahn is absolutely immune from compelled congressional testimony with respect to matters occurring during his service as a senior adviser to the President.”<sup>159</sup> The letter attached an OLC opinion advising that “Congress may not constitutionally compel the President’s senior advisers to testify about their official duties.”<sup>160</sup> That opinion acknowledged, however, that the Attorney General’s public release “of a redacted version of the Special Counsel’s report (with the President’s consent) does extinguish the Executive Branch’s confidentiality interests in the precise information that has already been revealed” in the Report.<sup>161</sup> Based on OLC’s advice, Cipollone notified the Judiciary Committee that the President had directed McGahn not to attend the hearing.<sup>162</sup>

76. That same evening, private counsel for McGahn wrote to Chairman Nadler that McGahn “finds himself facing contradictory instructions from two co-equal branches of

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<sup>157</sup> Exhibit W, Letter from Jerrold Nadler, Chairman, H. Comm. on the Judiciary, to Donald F. McGahn II, at 2 (May 17, 2019).

<sup>158</sup> *Id.* at 1.

<sup>159</sup> Exhibit B at 1.

<sup>160</sup> Exhibit C at 1.

<sup>161</sup> *Id.* at 13.

<sup>162</sup> Exhibit B at 2.

government” and therefore would decline to appear at the next day’s hearing.<sup>163</sup> McGahn’s counsel further asserted that “McGahn remains obligated to maintain the status quo,” pending any accommodation between the Judiciary Committee and the White House.<sup>164</sup>

77. Chairman Nadler immediately responded to McGahn, stating that McGahn’s appearance was compelled by law, regardless of the White House’s direction, including because OLC’s analysis “has no support in relevant case law, and its arguments have been flatly rejected by the courts.”<sup>165</sup> Further, Chairman Nadler explained that President Trump’s order that McGahn not appear was “unprecedented”—OLC did not point to any prior instance “where Congress planned to ask [a] White House aide about possible crimes committed by the President” and that aide “refused to testify.”<sup>166</sup>

78. On May 21, 2019, the Judiciary Committee convened for its scheduled hearing. Neither McGahn nor the White House had sought any legal recourse—McGahn simply refused to appear. During opening statements, Chairman Nadler reiterated McGahn’s legal obligation to appear, and offered McGahn the chance to “immediately correct his mistake.”<sup>167</sup> McGahn did not respond.

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<sup>163</sup> Exhibit X, Letter from William A. Burck to Jerrold Nadler, Chairman, H. Comm. on the Judiciary, at 1-2 (May 20, 2019).

<sup>164</sup> *Id.* at 2.

<sup>165</sup> Exhibit GG, Letter from Jerrold Nadler, Chairman, H. Comm. on the Judiciary, to Donald F. McGahn II, at 1 (May 20, 2019).

<sup>166</sup> *Id.* at 1-2.

<sup>167</sup> Exhibit Y, *Oversight of the Report by Special Counsel Robert S. Mueller, III: Former White House Counsel Donald F. McGahn, II: Hearing Before the H. Comm. on the Judiciary*, 116th Cong. (May 21, 2019) (statement by Jerrold Nadler, Chairman, H. Comm. on the Judiciary), Hearing Tr. at 4.

79. On May 31, 2019, Chairman Nadler again wrote to McGahn and Cipollone.<sup>168</sup> Chairman Nadler offered “to discuss any reasonable accommodation(s) that would facilitate McGahn’s appearance” before the Judiciary Committee, including “limiting [his] testimony,” “identifying with greater specificity the precise areas of intended inquiry,” and “agreeing to the presence of White House counsel during any testimony.”<sup>169</sup> Chairman Nadler requested that McGahn inform the Judiciary Committee whether he was willing to engage in accommodation discussions by June 7, 2019.<sup>170</sup> Neither McGahn nor Cipollone responded to the Judiciary Committee’s letter.

80. From mid to late June, the Judiciary Committee had a series of discussions with attorneys in the White House Counsel’s Office to discuss the McGahn Subpoena and attempt to reach a compromise regarding McGahn’s public testimony. During those discussions, the Judiciary Committee offered to limit McGahn’s testimony to matters that overlap with the Special Counsel’s Report. It also proposed withdrawing the McGahn Subpoena so that McGahn’s appearance would be voluntary and agreed to consider any other reasonable accommodation for McGahn’s public testimony that would be amenable to the President. These offered accommodations were contingent on reaching an agreement for McGahn’s prompt testimony. The White House Counsel attorneys agreed to consider the offers, and negotiations continued through mid-July.

81. On July 17, 2019, attorneys in the White House Counsel’s Office indicated that they would not accept any of the proposed accommodations for McGahn’s public testimony.

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<sup>168</sup> Exhibit Z, Letter from Jerrold Nadler, Chairman, H. Comm. on the Judiciary, to Donald F. McGahn II and Pat A. Cipollone, Counsel to the President (May 31, 2019).

<sup>169</sup> *Id.* at 2.

<sup>170</sup> *Id.*



82. On July 18, the Judiciary Committee reached out again to McGahn's private counsel to discuss whether the Judiciary Committee could offer any accommodation that would cause McGahn to comply with the subpoena and to avoid the need for litigation.

83. On July 26, McGahn's counsel rejected all accommodation efforts for public testimony and confirmed that McGahn would continue to follow the President's instruction not to appear. After months of attempted accommodation, the Judiciary Committee and McGahn are therefore now at an impasse.

***b. The Judiciary Committee's Efforts To Secure Relevant Information Through Other Means***

84. In addition to seeking a reasonable accommodation with McGahn for his testimony, the Judiciary Committee has made efforts to secure information from other witnesses to President Trump's obstructive conduct described in the Report. The White House has blocked those efforts as well.

85. On May 21, 2019, the Judiciary Committee issued subpoenas to Annie Donaldson Talley, McGahn's former chief of staff, and Hope Hicks, the former White House communications director, both of whom were present for certain of the episodes of Presidential obstruction described in the Report.<sup>171</sup>

86. The White House has taken the position that Hicks, like McGahn, is "absolutely immune" from being compelled to testify before Congress.<sup>172</sup> Although Hicks voluntarily appeared for an interview on June 19, 2019, lawyers from the White House and OLC objected

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<sup>171</sup> See Exhibit AA, Subpoena from Judiciary Committee to Annie Donaldson Talley (May 21, 2019); see also Exhibit BB, Subpoena from Judiciary Committee to Hope Hicks (May 21, 2019).

<sup>172</sup> Exhibit CC, Letter from Pat A. Cipollone, Counsel to the President, to Jerrold Nadler, Chairman, H. Comm. on the Judiciary, at 1 (June 18, 2019).

155 times to questions posed to Hicks on the asserted basis of “absolute immunity.”<sup>173</sup> As to Donaldson, although the Judiciary Committee reached an accommodation due to medical reasons allowing her to submit written answers to its questions, her responses included a direction by the White House not to answer over 200 of the questions because the answers would “implicate constitutionally-based Executive Branch confidentiality interests.”<sup>174</sup>

#### **4. The Administration’s Purported Justifications For McGahn’s Refusal To Testify**

##### ***a. “Absolute Immunity”***

87. McGahn, a private citizen, has defied the Judiciary Committee’s subpoena based on a purported order from President Trump. The sole basis for this order and for McGahn’s resulting refusal to testify is the assertion that McGahn, as a former Presidential adviser, is “absolutely immune” from compelled testimony to Congress.<sup>175</sup>

88. Specifically, the Executive Branch has taken the position that, under separation-of-powers principles, “Congress may not constitutionally compel the President’s senior advisers to testify about their official duties.”<sup>176</sup> Under this theory, certain Presidential advisers are absolutely immune from appearing before Congress to testify—even if Congress can demonstrate a compelling need for the information.

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<sup>173</sup> See generally Exhibit EE, *Transcribed Interview of Hope Hicks*, H. Comm. on the Judiciary, 116th Cong. (June 19, 2019).

<sup>174</sup> Exhibit FF, Letter from Michael M. Purpura, Dep’y Gen. Counsel to the President, to Sandra Moser, at 1 (July 5, 2019); see also Exhibit DD, Letter from Pat A. Cipollone, Counsel to the President, to Jerrold Nadler, Chairman, H. Comm. on the Judiciary, at 1 (June 4, 2019). The White House, however, did not object to Ms. Donaldson answering other questions, including whether she told the truth during her interview with the Special Counsel in response to questions about specific statements attributed to her in the Report. See Exhibit HH, Letter from Sandra Moser to Jerrold Nadler, Chairman, H. Comm. on the Judiciary, at 3-5 (July 5, 2019).

<sup>175</sup> Exhibit B at 1; Exhibit C at 1.

<sup>176</sup> *Id.*

89. This “absolute immunity” doctrine has no grounding in the Constitution, any statutes, or case law and never has been accepted by any court. Indeed, the only court ever to consider the issue “reject[ed] the Executive’s claim of absolute immunity for senior presidential aides,” explaining that the Executive Branch’s position would, among other things, “eviscerate Congress’s historical oversight function.”<sup>177</sup> Moreover, the President has cited no legal authority for his purported ability to direct a private citizen to disobey a lawfully issued Congressional subpoena other than an OLC opinion, which is not law and has no binding effect outside the Executive Branch.

***b. Executive Privilege***

90. The Executive Branch has long taken the position that the President can protect certain Presidential communications from disclosure by asserting executive privilege.<sup>178</sup> The President, however, has not invoked executive privilege in response to the Judiciary Committee’s McGahn Subpoena.

91. Regardless, the President has waived executive privilege over much of the testimony the Judiciary Committee seeks, including McGahn’s testimony about matters and information discussed in the published Report. Courts, including the D.C. Circuit, have recognized that the release of a document or information to a third party “waives [executive] privilege[] for the document or information specifically released.”<sup>179</sup>

92. Here, President Trump has waived executive privilege over the matters and information discussed in the Special Counsel’s publicly released Report. In a press conference

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<sup>177</sup> *Comm. on the Judiciary, U.S. House of Representatives v. Miers*, 558 F. Supp. 2d 53, 99, 103 (D.D.C. 2008).

<sup>178</sup> *See In re Sealed Case*, 121 F.3d 729, 736-40 (D.C. Cir. 1997).

<sup>179</sup> *Id.* at 741.

accompanying Attorney General Barr’s public release of a redacted version of the Report, the Attorney General confirmed that the President “would not assert privilege over the Special Counsel’s report” and, therefore, the Report contained “no material ... redacted based on executive privilege.”<sup>180</sup> Moreover, OLC has admitted that the Attorney General’s release “of a redacted version of the Special Counsel’s report (with the President’s consent) ... extinguish[ed] the Executive Branch’s confidentiality interests in the precise information” revealed in the Report.<sup>181</sup>

93. By allowing the Special Counsel to interview White House aides and obtain White House documents, President Trump also has waived executive privilege over the information disclosed during those interviews and in those documents. Indeed, the President’s personal attorney informed the Special Counsel that, “[i]n an effort to provide complete transparency, the President waived the obviously applicable privileges” to allow relevant witnesses to share information with the Special Counsel’s Office.<sup>182</sup>

94. McGahn sat for at least five interviews with the Special Counsel’s investigators from November 30, 2017, through February 28, 2019.<sup>183</sup> According to a public statement issued by McGahn’s counsel, “President Trump, through counsel, declined to assert any privilege over Mr. McGahn’s testimony” when the Special Counsel’s team sought these interviews, “so Mr.

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<sup>180</sup> Barr Public Statement.

<sup>181</sup> Exhibit C at 13.

<sup>182</sup> Letter from John M. Dowd and Jay A. Sekulow to Robert S. Mueller, Re: Request for Testimony on Alleged Obstruction of Justice (Jan. 29, 2018), <https://perma.cc/HUW9-J4VD>.

<sup>183</sup> *See, e.g., Report* Vol. II at 31, 35, 52, 63, and 84 (citing FBI “302” reports of McGahn’s interviews from five separate dates: Nov. 30, 2017; Dec. 12, 2017; Dec. 14, 2017; Mar. 8, 2018; and Feb. 28, 2019).

McGahn answered the special counsel team's questions fulsomely and honestly."<sup>184</sup> The White House also provided McGahn and his counsel documents relating to his interviews, and upon information and belief they retained these documents after McGahn left government service, which would also waive any executive privilege over the information contained in those documents.<sup>185</sup>

95. Finally, even aside from the fact that it was waived here, executive privilege is a qualified privilege that can be overcome by a sufficient showing of need.<sup>186</sup> McGahn's testimony regarding President Trump's potentially obstructive conduct is crucial to the Judiciary Committee's independent investigation and its decision whether to recommend articles of impeachment. Additionally, President Trump's conduct has diminished any legitimate confidentiality interest he may have had over McGahn's testimony, while underscoring the Judiciary Committee's need for that testimony. The President has, as set forth, repeatedly and publicly addressed the events described in the Mueller Report—primarily by denying that he ever attempted to fire Special Counsel Mueller. He has attacked McGahn's character and credibility, including by accusing McGahn of lying to Special Counsel Mueller in order to "make ... himself look like a good lawyer."<sup>187</sup> As the D.C. Circuit has long held, "a party may not use privilege 'as a tool for manipulation of the truth-seeking process.'"<sup>188</sup> Therefore, even if the

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<sup>184</sup> Michael S. Schmidt & Maggie Haberman, *White House Counsel, Don McGahn, Has Cooperated Extensively in Mueller Inquiry*, N.Y. Times (Aug. 18, 2018), <https://perma.cc/5MN4-JN52>.

<sup>185</sup> See *In re Sealed Case*, 121 F.3d at 741-42.

<sup>186</sup> *United States v. Nixon*, 418 U.S. 683, 705-07 (1974).

<sup>187</sup> See, e.g., *Transcript: ABC News' George Stephanopoulos' Exclusive Interview with President Trump*, ABC News (June 16, 2019), <https://perma.cc/3WL3-G8J9>; see also *supra* II(A)(3).

<sup>188</sup> *In re Kellogg Brown & Root, Inc.*, 796 F.3d 137, 145 (D.C. Cir. 2015) (quoting *In re Sealed Case*, 676 F.2d 793, 807 (D.C. Cir. 1982)).

President were to assert executive privilege over McGahn's testimony at this late date, the Judiciary Committee's need for the information outweighs any asserted Executive Branch interest in confidentiality.<sup>189</sup>

## **5. Injury To The Judiciary Committee**

96. McGahn's refusal without a lawful basis to testify before the Judiciary Committee constitutes an ongoing and irreparable injury.

97. McGahn is the Judiciary Committee's most important fact witness in its consideration of whether to recommend articles of impeachment and its related investigation of misconduct by the President, including acts of obstruction of justice described in the Special Counsel's Report. President Trump has redoubled his efforts to prevent the Judiciary Committee's scrutiny of his conduct by attempting to block the Judiciary Committee's subpoena to McGahn. Indeed, he has publicly declared, "I don't want people testifying to [House Democrats],"<sup>190</sup> and has announced, "We're fighting all the subpoenas."<sup>191</sup> These actions, and McGahn's resultant refusal to testify, deprive the Judiciary Committee of its ability to exercise its proper functions and strike at the core of Congress's mandated role in our constitutional system.

98. In addition, the Judiciary Committee has an urgent oversight duty to protect ongoing investigations from improper interference, to ascertain whether improper political considerations are causing DOJ to open new investigations, and to consider potential legislation before the Judiciary Committee on these issues. McGahn, who repeatedly advised the President

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<sup>189</sup> See *id.* at 707-13.

<sup>190</sup> Robert Costa et al., *Trump Says He Is Opposed to White House Aides Testifying to Congress, Deepening Power Struggle with Hill*, Wash. Post (Apr. 23, 2019), <https://perma.cc/FL3H-TUXL>.

<sup>191</sup> See *Remarks by President Trump Before Marine One Departure*, White House (Apr. 24, 2019), <https://perma.cc/W7VZ-FZ3T>.

against interfering in DOJ investigations and was responsible for managing contacts between the White House and DOJ, is uniquely situated to inform the Judiciary Committee's current oversight efforts with regard to these concerns.

99. McGahn's refusal to comply with the Judiciary Committee's subpoena interferes with the House's ability to perform these core constitutional functions in at least the following specific ways:

100. *First*, as set forth above, the Judiciary Committee has the responsibility of determining whether to recommend articles of impeachment against the President for possible misconduct described in the Special Counsel's Report—whether in the form of those articles already referred to the Judiciary Committee,<sup>192</sup> or through additional or other articles the Judiciary Committee itself may choose to draft. Consideration of this remedy is an urgent task. As DOJ itself has explained, “the Framers ... specifically determined that the public interest in *immediately* removing a sitting President whose continuation in office poses a threat to the Nation's welfare outweighs the public interest in avoiding the Executive burdens incident thereto.”<sup>193</sup> As discussed above, McGahn's testimony is crucial to the Judiciary Committee's investigation—and by refusing to comply with the Judiciary Committee's subpoena, McGahn is interfering with the House's ability to exercise its constitutional responsibility. Without McGahn's firsthand testimony regarding the key episodes of potential Presidential misconduct he observed, the Judiciary Committee is significantly hampered in assessing the full facts and circumstances surrounding the President's actions.

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<sup>192</sup> See 165 Cong. Rec. H211 (daily ed. Jan. 3, 2019) (noting referral of H. Res. 13 to Comm. on the Judiciary).

<sup>193</sup> A Sitting President's Amenability to Indictment and Criminal Prosecution, 24 Op. O.L.C. 222, 258 (2000) (emphasis added).

101. *Second*, McGahn's refusal to testify deprives the Judiciary Committee of information urgently needed to conduct oversight of DOJ, including regarding any improper political interference with ongoing investigations. The Report describes repeated efforts by the President to influence and undermine the Special Counsel's investigation. The Special Counsel's Office referred or transferred 25 additional matters to other offices within the Department, many of which are ongoing.<sup>194</sup> At least some ongoing matters may implicate the President personally, such as the prosecution of Roger Stone and the reported investigation of the President's 2017 inaugural committee.<sup>195</sup> Given the President's extensively documented attempts to interfere with the Special Counsel's investigation, these matters may be equally vulnerable to the President's interference. For example, public reporting indicates that President Trump may already have attempted to interfere in proceedings in New York involving his former personal attorney, Michael Cohen.<sup>196</sup>

102. *Third*, McGahn's refusal to testify is impeding the Judiciary Committee's ability to fully assess potential remedial legislation relating to the types of obstructive conduct described in the Special Counsel's Report. For example, McGahn's testimony would directly inform the Committee's consideration of whether existing regulatory protections for special counsels are adequate. His testimony also would directly inform the Judiciary Committee's consideration of

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<sup>194</sup> *Report*, App. D-1 to D-6.

<sup>195</sup> Indictment, *United States v. Roger Stone*, No. 1:19-cr-18 (D.D.C. Jan. 24, 2019); Maggie Haberman & Ben Protess, *Trump Inaugural Committee Ordered to Hand Over Documents to Federal Investigators*, N.Y. Times (Feb. 4, 2019) (describing investigation of President Trump's 2017 inaugural committee), <https://perma.cc/3F27-YLAZ>.

<sup>196</sup> Mark Mazzetti et al., *Intimidation, Pressure and Humiliation: Inside Trump's Two-Year War on the Investigations Encircling Him*, N.Y. Times (Feb. 19, 2019), <https://perma.cc/7TR6-EN32>.



pending legislation referred to the Judiciary Committee to protect the independence of special counsel investigations.<sup>197</sup>

103. *Fourth*, McGahn's refusal to testify deprives the Judiciary Committee of important evidence needed to (1) ensure that DOJ and the FBI are allocating appropriate resources toward protecting America's elections in 2020 and thereafter; and (2) consider fully potential remedial legislation on election security, including requiring candidates to report certain foreign contacts.

104. These injuries to the Judiciary Committee are grave, ongoing, and irreparable. Each day that McGahn refuses to testify, the Judiciary Committee is deprived of its ability to carry out the significant Article I task of determining whether to recommend that the President be impeached and potentially removed from office. Moreover, each day McGahn refuses to testify, the Judiciary Committee is deprived of testimony that would inform its oversight of DOJ and consideration of legislation that may be urgently needed.

105. Furthermore, because the House is not a continuing body, the Judiciary Committee's investigation and the articles of impeachment referred to the Committee related to that investigation will necessarily end on January 3, 2021. The Judiciary Committee requires a substantial period in advance of that date to perform its constitutional duties. Every day that the Judiciary Committee is without McGahn's testimony further delays its ability to pursue its inquiries on issues of national importance before the current Congress ends. Even assuming a future Judiciary Committee were to decide to continue the investigation, it would have to

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<sup>197</sup> See, e.g., Special Counsel Independence and Integrity Act, H.R. 197, 116th Cong. (2019).

reconsider any articles of impeachment and reissue similar requests and subpoenas, thus resulting in even further delay.

### **SPECIFIC CLAIM FOR RELIEF**

#### **COUNT: ARTICLE I OF THE CONSTITUTION**

106. The Judiciary Committee incorporates by reference and realleges the preceding paragraphs, as if set forth fully herein.

107. The McGahn Subpoena was duly authorized, issued, and served pursuant to the Judiciary Committee's powers under Article I of the Constitution of the United States.

108. The McGahn Subpoena required McGahn to appear for testimony before the House Judiciary Committee on May 21, 2019, yet McGahn did not appear as required.

109. The Judiciary Committee has attempted to make reasonable accommodations for McGahn's testimony, but those efforts are at an impasse and McGahn continues to refuse to testify publicly before the Committee.

110. There is no lawful basis for McGahn's refusal to appear before the Judiciary Committee.

111. McGahn enjoys no absolute immunity from appearing before the Judiciary Committee.

112. The President has waived executive privilege as to the subpoenaed testimony that relates to matters and information discussed in the Report.

113. McGahn has violated and continues to violate his legal obligations by refusing to appear before the Judiciary Committee as required by the subpoena and, moreover, by refusing to answer questions where there has been no assertion of executive or other privilege or where executive privilege has been waived.

114. As a result, the Judiciary Committee has been, and will continue to be, injured by McGahn's actions.

**PRAYER FOR RELIEF**

WHEREFORE, the Judiciary Committee respectfully prays that this Court:

A. Pursuant to 28 U.S.C. §§ 2201 and 2202, enter declaratory and injunctive relief as follows:

1. Declare that McGahn's refusal to appear before the Committee in response to the subpoena issued to him was without legal justification;
2. Issue an injunction ordering McGahn to appear and testify forthwith before the Committee; and
3. Issue an injunction ordering McGahn to testify as to matters and information discussed in the Special Counsel's Report and any other matters and information over which executive privilege has been waived or is not asserted.

B. Retain jurisdiction to review any disputes that may arise regarding compliance with this Court's order.

C. Grant the Committee such other and further relief as may be just and proper under the circumstances.

Respectfully submitted,

/s/ Douglas N. Letter

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*Counsel for Plaintiff Committee on the Judiciary of  
the U.S. House of Representatives*

August 7, 2019

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<sup>198</sup> Attorneys for the Office of General Counsel for the U.S. House of Representatives are “entitled, for the purpose of performing the counsel’s functions, to enter an appearance in any proceeding before any court of the United States or of any State or political subdivision thereof without compliance with any requirements for admission to practice before such court.” 2 U.S.C. § 5571. The Office of General Counsel wishes to acknowledge the assistance of law clerks Lily Hsu, a student at The George Washington University Law School, Nate King, a student at The Catholic University of America, Columbus School of Law, and legal assistant Henry Raffel, a student at the University of Michigan, in preparing this complaint. The Institute for Constitutional Advocacy and Protection also wishes to acknowledge the assistance of law clerk Nikita Lalwani, a student at Yale Law School.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit A**

RPTR ZAMORA

EDTR ZAMORA

OVERSIGHT OF THE REPORT ON THE INVESTIGATION INTO RUSSIAN  
INTERFERENCE IN THE 2016 PRESIDENTIAL ELECTION: FORMER SPECIAL  
COUNSEL ROBERT S. MUELLER, III

Wednesday, July 24, 2019

House of Representatives,  
Committee on the Judiciary,  
Washington, D.C.

The committee met, pursuant to call, at 8:32 a.m., in Room  
2141, Rayburn House Office Building, Hon. Jerrold Nadler [chairman  
of the committee] presiding.

Present: Representatives Nadler, Lofgren, Jackson Lee,  
Cohen, Johnson of Georgia, Deutch, Bass, Richmond, Jeffries,  
Cicilline, Swalwell, Lieu, Raskin, Jayapal, Demings, Correa,  
Scanlon, Garcia, Neguse, McBath, Stanton, Dean, Mucarsel-Powell,  
Escobar, Collins, Sensenbrenner, Chabot, Gohmert, Jordan, Buck,  
Ratcliffe, Roby, Gaetz, Johnson of Louisiana, Biggs, McClintock,  
Lesko, Reschenthaler, Cline, Armstrong, and Steube.

Staff Present: Aaron Hiller, Deputy Chief Counsel; Arya Hariharan, Deputy Chief Oversight Counsel; David Greengrass, Senior Counsel; John Doty, Senior Advisor; Lisette Morton, Director Policy, Planning, and Member Services; Madeline Strasser, Chief Clerk; Moh Sharma, Member Services and Outreach Advisor; Susan Jensen, Parliamentarian/Senior Counsel; Sarah Istel, Oversight Counsel; Julian Gerson, Staff Assistant; Will Emmons, Professional Staff Member; Brendan Belair, Minority Staff Director; Bobby Parmiter, Minority Deputy Staff Director/Chief Counsel; Jon Ferro, Minority Parliamentarian/General Counsel; Carlton David, Minority Chief Oversight Counsel; Ashley Callen, Minority Oversight Counsel; Danny Johnson, Minority Oversight Counsel; Jake Greenberg, Minority Oversight Counsel; and Erica Barker, Minority Chief Legislative Clerk.

Chairman Nadler. The Judiciary Committee will come to order. Without objection, the chair is authorized to declare recesses of the committee at any time.

We welcome everyone to today's hearing on oversight of the report on the investigation into Russian interference in the 2016 Presidential election. I will now recognize myself for a brief opening statement.

Director Mueller, thank you for being here. I want to say just a few words about our themes today: responsibility, integrity, and accountability. Your career, for example, is a model of responsibility. You are a decorated Marine officer. You were awarded a Purple Heart and the Bronze Star for valor in Vietnam. You served in senior roles at the Department of Justice, and in the immediate aftermath of 9/11, you served as director of the FBI.

Two years ago, you return to public service to lead the investigation into Russian interference in the 2016 elections. You conducted that investigation with remarkable integrity. For 22 months, you never commented in public about your work, even when you were subjected to repeated and grossly unfair personal attacks. Instead, your indictments spoke for you and in astonishing detail.

Over the course of your investigation, you obtained criminal indictments against 37 people and entities. You secured the conviction of President Trump's campaign chairman, his deputy



campaign manager, his National Security Advisor, and his personal lawyer, among others. In the Paul Manafort case alone, you recovered as much as \$42 million so that the cost of your investigation to the taxpayers approaches zero.

And in your report you offer the country accountability as well. In Volume I, you find that the Russian Government attacked our 2016 elections, quote, in a sweeping and systematic fashion, and that the attacks were designed to benefit the Trump campaign.

Volume II walks us through 10 separate incidents of possible obstruction of justice where, in your words, President Trump attempted to exert undue influence over your investigation. The President's behavior included, and I quote from your report, quote, public attacks on the investigation, nonpublic efforts to control it, and efforts in both public and private to encourage witnesses not to cooperate, close quote.

Among the most shocking of these incidents, President Trump ordered his White House counsel to have you fired and then to lie and deny that it had happened. He awarded his former campaign manager to convince the recused Attorney General to step in and to limit your work, and he attempted to prevent witnesses from cooperating with your investigation.

Although Department policy barred you from indicting the President for this conduct, you made clear that he is not exonerated. Any other person who acted in this way would have been charged with crimes, and in this Nation, not even the

President is above the law, which brings me to this committee's work: responsibility, integrity, and accountability. These are the marks by which we who serve on this committee will be measured as well.

Director Mueller, we have a responsibility to address the evidence that you have uncovered. You recognize as much when you said, quote, the Constitution requires a process other than the criminal justice system to formally accuse a sitting President of wrongdoing, close quote. That process begins with the work of this committee.

We will follow your example, Director Mueller. We will act with integrity. We will follow the facts where they lead. We will consider all appropriate remedies. We will make our recommendation to the House when our work concludes. We will do this work because there must be accountability for the conduct described in your report, especially as it relates to the President.

Thank you again, Director Mueller. We look forward to your testimony.

It is now my pleasure to recognize the ranking member of the Judiciary Committee, the gentleman from Georgia, Mr. Collins, for his opening statement.

[The statement of Chairman Nadler follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Mr. Collins. Thank you, Mr. Chairman. And thank you, Mr. Mueller, for being here.

For 2 years leading up to the release of the Mueller report and in the 3 months since, Americans were first told what to expect and then what to believe. Collusion, we were told, was in plain sight, even if the special counsel's team didn't find it.

When Mr. Mueller produced his report and Attorney General Barr provided it to every American, we read no American conspired with Russia to interfere in our elections but learned the depths of Russia's malice toward America.

We are here to ask serious questions about Mr. Mueller's work, and we will do that. After an extended, unhampered investigation, today marks an end to Mr. Mueller's involvement in an investigation that closed in April. The burden of proof for accusations that remain unproven is extremely high and especially in light of the special counsel's thoroughness.

We were told this investigation began as an inquiry into whether Russia meddled in our 2016 election. Mr. Mueller, you concluded they did. Russians accessed Democrat servers and disseminated sensitive information by tricking campaign insiders into revealing protected information.

The investigation also reviewed whether Donald Trump, the President, sought Russian assistance as a candidate to win the Presidency. Mr. Mueller concluded he did not. His family or advisers did not. In fact, the report concludes no one in the

President's campaign colluded, collaborated, or conspired with the Russians.

The President watched the public narrative surrounding this investigation [inaudible] assume his guilt while he knew the extent of his innocence. Volume II of Mr. Mueller's report details the President's reaction to frustrating investigation where his innocence was established early on. The President's attitude toward the investigation was understandably negative, yet the President did not use his authority to close the investigation. He asked his lawyer if Mr. Mueller had conflicts that disqualified Mr. Mueller from the job, but he did not shut down the investigation. The President knew he was innocent.

Those are the facts of the Mueller report. Russia meddled in the 2016 election, the President did not conspire with the Russians, and nothing we hear today will change those facts. But one element of this story remains: the beginnings of the FBI investigation into the President. I look forward to Mr. Mueller's testimony about what he found during his review of the origins of the investigation.

In addition, the inspector general continues to review how baseless gossip can be used to launch an FBI investigation against a private citizen and eventually a President. Those results will be released, and we will need to learn from them to ensure government intelligence and our law enforcement powers are never again used and turned on a private citizen or a potential -- or a

political candidate as a result of the political leanings of a handful of FBI agents.

The origins and conclusions of the Mueller investigation are the same things: what it means to be American. Every American has a voice in our democracy. We must protect the sanctity of their voice by combatting election interference. Every American enjoys the presumption of innocence and guarantee of due process. If we carry nothing -- anything away today, it must be that we increase our vigilance against foreign election interference, while we ensure our government officials don't weaponize their power against the constitutional rights guaranteed to every U.S. citizen.

Finally, we must agree that the opportunity cost here is too high. The months we have spent investigating from this dais failed to end the border crisis or contribute to the growing job market. Instead, we have gotten stuck, and it's paralyzed this committee and this House.

And as a side note, every week, I leave my family and kids, the most important things to me, to come to this place because I believe this place is a place where we can actually do things and help people. Six and a half years ago, I came here to work on behalf of the people of the Ninth District in this country, and we accomplished a lot in those first 6 years on a bipartisan basis with many of my friends across the aisle sitting on this dais with me today. However, this year, because of the majority's dislike

of this President and the endless hearing and to a closed investigation have caused us to accomplish nothing except talk about the problems of our country, while our border is on fire, in crisis, and everything else is stopped.

This hearing is long overdue. We have had truth for months. No American conspired to throw our election. What we need today is to let that truth bring us confidence, and I hope, Mr. Chairman, closure.

With that, I yield back.

[The statement of Mr. Collins follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Chairman Nadler. Thank you, Mr. Collins.

I will now introduce today's witness.

Robert Mueller served as Director of the FBI from 2001 to 2013, and most recently served as special counsel in the Department of Justice overseeing the investigation into Russian interference in the 2016 special election.

He received his BA from Princeton University and MA from New York University, in my district, and his JD from the University of Virginia. Mr. Mueller is accompanied by his -- by counsel, Aaron Zebley, who served as deputy special counsel on the investigation.

We welcome our distinguished witness, and we thank you for participating in today's hearing.

Now, if you would please rise, I will begin by swearing you in.

Raise your right hand, please. Left hand.

Do you swear or affirm under penalty of perjury that the testimony you're about to give is true and correct to the best of your knowledge, information, and belief, so help you God?

Let the record show the witness answered in the affirmative.

Thank you. And please be seated.

Please note that your written statement will be entered into the record in its entirety. Accordingly, I ask that you summarize your testimony in 5 minutes.

Director Mueller, you may begin.

**STATEMENT OF ROBERT S. MUELLER, III, SPECIAL COUNSEL, THE SPECIAL COUNSEL'S OFFICE, THE INVESTIGATION INTO RUSSIAN INTERFERENCE IN THE 2016 PRESIDENTIAL ELECTION, MAY 2017 TO MAY 2019**

Mr. Mueller. Good morning, Chairman Nadler and Ranking Member Collins, and the members of the committee.

As you know, in May 2017, the Acting Attorney General asked me to serve as special counsel. I undertook that role because I believed that it was of paramount interest to the Nation to determine whether a foreign adversary had interfered in the Presidential election. As the Acting Attorney General said at the time, the appointment was necessary in order for the American people to have full confidence in the outcome.

My staff and I carried out this assignment with that critical objective in mind: to work quietly, thoroughly, and with integrity so that the public would have full confidence in the outcome.

The order appointing me as special counsel directed our office to investigate Russian interference in the 2016 Presidential election. This included investigating any links or coordination between the Russian Government and individuals associated with the Trump campaign. It also included investigating efforts to interfere with or obstruct our investigation.



Throughout the investigation, I continually stressed two things to the team that we had assembled. First, we needed to do our work as thoroughly as possible and as expeditiously as possible. It was in the public interest for our investigation to be complete but not to last a day longer than was necessary.

Second, the investigation needed to be conducted fairly and with absolute integrity. Our team would not leak or take other actions that could compromise the integrity of our work. All decisions were made based on the facts and the law.

During the course of our investigation, we charged more than 30 defendants with committing Federal crimes, including 12 officers of the Russian military. Seven defendants have been convicted or pled guilty. Certain other charges we brought remain pending today, and for those matters, I stress that the indictments contain allegations and every defendant is presumed innocent unless and until proven guilty.

In addition to the criminal charges we brought, as required by Justice Department regulations, we submitted a confidential report to the Attorney General at the conclusion of our investigation. The report set forth the results of our work and the reasons for our charging and declination decisions. The Attorney General later made the report largely public.

As you know, I made a few limited remarks about our report when we closed the Special Counsel's Office in May of this year, but there are certain points that bear emphasis. First, our

investigation found that the Russian Government interfered in our election in sweeping and systematic fashion.

Second, the investigation did not establish that members of the Trump campaign conspired with the Russian Government in its election interference activities. We did not address collusion, which is not a legal term; rather, we focused on whether the evidence was sufficient to charge any member of the campaign with taking part in a criminal conspiracy, and it was not.

Third, our investigation of efforts to obstruct the investigation and lie to investigators was of critical importance. Obstruction of justice strikes at the core of the government's effort to find the truth and to hold wrongdoers accountable.

Finally, as described in Volume II of our report, we investigated a series of actions by the President towards the investigation. Based on Justice Department policy and principles of fairness, we decided we would not make a determination as to whether the President committed a crime. That was our decision then and it remains our decision today.

Let me say a further word about my appearance today. It is unusual for a prosecutor to testify about a criminal investigation. And given my role as a prosecutor, there are reasons why my testimony will necessarily be limited.

First, public testimony could affect several ongoing matters. In some of these matters, court rules or judicial orders limit the disclosure of information to protect the fairness of the

proceedings. And consistent with longstanding Justice Department policy, it would be inappropriate for me to comment in any way that could affect an ongoing matter.

Second, the Justice Department has asserted privileges concerning investigative information and decisions, ongoing matters within the Justice Department, and deliberations within our office. These are Justice Department privileges that I will respect. The Department has released the letter discussing the restrictions on my testimony. I therefore will not be able to answer questions about certain areas that I know are of public interest.

For example, I am unable to address questions about the initial opening of the FBI's Russia investigation, which occurred months before my appointment, or matters related to the so-called Steele dossier. These matters are subjects of ongoing review by the Department. Any questions on these topics should therefore be directed to the FBI or the Justice Department.

As I explained when we closed the Special Counsel's Office in May, our report contains our findings and analysis and the reasons for the decisions we made. We conducted an extensive investigation over 2 years. In writing the report, we stated the results of our investigation with precision. We scrutinized every word. I do not intend to summarize or describe the results of our work in a different way in the course of my testimony today. And as I said on May 29, the report is my testimony, and I will stay

within that text.

And as I stated in May, I will not comment on the actions of the Attorney General or of Congress. I was appointed as a prosecutor, and I intend to adhere to that role and to the Department standards that govern it.

I will be joined today by Deputy Special Counsel Aaron Zebley. Mr. Zebley has extensive experience as a Federal prosecutor and at the FBI, where he served as my chief of staff. Mr. Zebley was responsible for the day-to-day oversight of the investigations conducted by our office.

Now, I also want to, again, say thank you to the attorneys, the FBI agents, the analysts, the professional staff who helped us conduct this investigation in a fair and independent manner. These individuals, who spent nearly 2 years working on this matter, were of the highest integrity.

Let me say one more thing. Over the course of my career, I have seen a number of challenges to our democracy. The Russian Government's effort to interfere in our election is among the most serious. And as I said on May 29, this deserves the attention of every American.

Thank you, Mr. Chairman.

[The statement of Mr. Mueller follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Chairman Nadler. Thank you.

We will now proceed under the 5-minute rule with questions.  
I will begin by recognizing myself for 5 minutes.

Director Mueller, the President has repeatedly claimed that your report found there was no obstruction and that it completely and totally exonerated him. But that is not what your report said, is it?

Mr. Mueller. Correct, that is not what the report said.

Chairman Nadler. In our reading from page 2 of Volume II of your report that is on the screen, you wrote, quote, if we had confidence after a thorough investigation of the facts that the President clearly did not commit obstruction of justice, we would so state. Based on the facts and the applicable legal standards, however, we are unable to reach that judgment, close quote.

Now, does that say there was no obstruction?

Mr. Mueller. No.

Chairman Nadler. In fact, you were actually unable to conclude the President did not commit obstruction of justice. Is that correct?

Mr. Mueller. Well, we at the outset, determined that we -- when it came to the President's culpability, we needed to -- we needed to go forward only after taking into account the OLC opinion that indicated that a President -- a sitting President cannot be indicted.

Chairman Nadler. So the report did not conclude that he did

not commit obstruction of justice. Is that correct?

Mr. Mueller. That is correct.

Chairman Nadler. And what about total exoneration? Did you actually totally exonerate the President?

Mr. Mueller. No.

Chairman Nadler. Now, in fact, your report expressly states that it does not exonerate the President?

Mr. Mueller. It does.

Chairman Nadler. And your investigation actually found, quote, multiple acts by the President that were capable of exerting undue influence over law enforcement investigations, including the Russian interference and obstruction investigations. Is that correct?

Mr. Mueller. Correct.

Chairman Nadler. Now, Director Mueller, can you explain in plain terms what that finding means so the American people can understand it?

Mr. Mueller. Well, the finding indicates that the President was not -- that the President was not exculpated for the acts that he allegedly committed.

Chairman Nadler. In fact, you were talking about incidents, quote, in which the President sought to use his official power outside of usual channels, unquote, to exert undue influence over your investigations. Is that right?

Mr. Mueller. That's correct.

Chairman Nadler. Now, am I correct, then, on page 7 of Volume II of your report, you wrote, quote, the President became aware that his own conduct was being investigated in an obstruction of justice inquiry. At that point, the President engaged in a second phase of conduct, involving public attacks on the investigation, nonpublic efforts to control it, and efforts in both public and private to encourage witnesses not to cooperate with the investigation, close quote.

So President Trump's efforts to exert undue influence over your investigation intensified after the President became aware that he personally was being investigated?

Mr. Mueller. I stick with the language that you have in front of you.

Chairman Nadler. Which --

Mr. Mueller. Which comes from page 7, Volume II.

Chairman Nadler. Now, is it correct that if you concluded that the President committed the crime of obstruction, you could not publicly state that in your report or here today?

Mr. Mueller. Can you repeat the question, sir?

Chairman Nadler. Is it correct that if you had concluded that the President committed the crime of obstruction, you could not publicly state that in your report or here today?

Mr. Mueller. Well, I would say you could -- the statement would be that you would not indict and you would not indict because under the OLC opinion a sitting President cannot be

indicted. It would be unconstitutional.

Chairman Nadler. Okay. So you could not state that because of the OLC opinion if that had been your conclusion?

Mr. Mueller. OLC opinion with some guide, yes.

Chairman Nadler. But under DOJ -- under Department of Justice policy, the President could be prosecuted for obstruction of justice crimes after he leaves office, correct?

Mr. Mueller. True.

Chairman Nadler. Thank you.

Did any senior White House official refuse a request to be interviewed by you and your team?

Mr. Mueller. I don't believe so.

Well, let me take that back. I would have to look at it, but I'm not certain that that was the case.

Chairman Nadler. Did the President refuse a request to be interviewed by you and your team?

Mr. Mueller. Yes.

Chairman Nadler. Yes. And is it true that you tried for more than a year to secure an interview with the President?

Mr. Mueller. Yes.

Chairman Nadler. And is it true that you and your team advised the President's lawyer that, quote, an interview with the President is vital to our investigation, close quote?

Mr. Mueller. Yes. Yes.

Chairman Nadler. And is it true that you also, quote, stated



that it is in the interest of the Presidency and the public for an interview to take place, close quote?

Mr. Mueller. Yes.

Chairman Nadler. But the President still refused to sit for an interview by you or your team?

Mr. Mueller. True. True.

Chairman Nadler. And did you also ask him to provide written answers to questions under 10 possible episodes of obstruction of justice crimes involving him?

Mr. Mueller. Yes.

Chairman Nadler. Did he provide any answers to a single question about whether he engaged in obstruction of justice crimes?

Mr. Mueller. I would have to check on that. I'm not certain.

Chairman Nadler. Director Mueller, we are grateful that you are here to explain your investigation and findings. Having reviewed your work, I believe anyone else would engage in the conduct describing your report would have been criminally prosecuted. Your work is vitally important to this committee and the American people because no one is above the law.

I'll now recognize the gentleman from Georgia, Mr. Collins.

Mr. Collins. Thank you, Mr. Chairman.

And we are moving, I understand and just reiterate, on the 5-minute rule. Mr. Mueller, I have several questions, many of

which that you just answered will be questioned here in a moment, but I want to lay some foundations. So we will go through these fairly quickly. I will talk slowly. I am said that I talk fast. I will talk slowly.

Mr. Mueller. Thank you, sir.

Mr. Collins. In your press conference, you stated any testimony from your office would not go beyond our report. We chose these words carefully. The words speaks for itself. I will not provide information beyond that which is already public in any appearance before Congress.

Do you stand by that statement?

Mr. Mueller. Yes.

Mr. Collins. Since closing the Special Counsel's Office in May of 2019, have you conducted any additional interviews or obtained any new information in your role as special counsel?

Mr. Mueller. In the wake of the report?

Mr. Collins. Since the closing of the office in May of 2019.

Mr. Mueller. And the question was?

Mr. Collins. Have you conducted any new interviews and any new witnesses or anything?

Mr. Mueller. No.

Mr. Collins. And you can confirm you're no longer special counsel, correct?

Mr. Mueller. I am no longer special counsel.

Mr. Collins. At any time with the investigation, was your

investigation curtailed or stopped or hindered?

Mr. Mueller. No.

Mr. Collins. Were you or your team provided any questions by Members of Congress of the majority ahead of your hearing today?

Mr. Mueller. No.

Mr. Collins. Your report states that your investigative team included 19 lawyers and approximately 40 FBI agents and analysts and accountants. Are those numbers accurate?

Mr. Mueller. Could you repeat that, please?

Mr. Collins. Forty FBI agents, 19 lawyers, intelligence analysts, and forensic accountants. Are those numbers accurate? This is included in your report.

Mr. Mueller. Generally, yes.

Chairman Nadler. Is it also true that you issued over 2,800 subpoenas, executed nearly 500 search warrants, obtained more than 230 orders for communication records, and 50 pen registers?

Mr. Mueller. That went a little fast for me.

Mr. Collins. Okay. In your report -- I will make this very simple -- you did a lot of work, correct?

Mr. Mueller. Yes. That I agree to.

Mr. Collins. A lot of subpoenas? A lot of pen registers?

Mr. Mueller. A lot of subpoenas, yes.

Mr. Collins. Okay. We will walk this really slow if we need to.

Mr. Mueller. A lot search warrants.

Mr. Collins. All right. A lot of search warrants, a lot of things. So you are very thorough?

Mr. Mueller. What?

Mr. Collins. In your opinion, very thorough, you listed this out in your report, correct?

Mr. Mueller. Yes.

Mr. Collins. Thank you.

Is it true the evidence gathered during your investigation -- or given the questions that you have just answered, is it true the evidence gathered during your investigation did not establish that the President was involved in the underlying crime related to Russian election interference as stated in Volume I, page 7?

Mr. Mueller. We found insufficient evidence of the President's culpability --

Mr. Collins. So that would be a yes.

Mr. Mueller. -- with -- pardon?

Mr. Collins. That would be a yes?

Mr. Mueller. Yes.

Mr. Collins. Thank you.

Isn't it true the evidence did not establish that the President or those close to him were involved in the charge of Russian computer hacking or active measure conspiracies or that the President otherwise had unlawful relationships with any Russian official, Volume II, pages 76, correct?

Mr. Mueller. I leave the answer to our report.

Mr. Collins. So that is a yes.

Is that true, your investigation did not establish that members of the Trump campaign conspired or coordinated with the Russian Government in the election interference activity, Volume I, page 2, Volume I, page 173?

Mr. Mueller. Thank you. Yes.

Mr. Collins. Yes. Thank you.

Although your report states collusion is not a specific offense, and you have said that this morning, or a term of art in Federal criminal law, conspiracy is.

In the colloquial context, are "collusion" and "conspiracy" essentially synonymous terms?

Mr. Mueller. You're going to have to repeat that for me.

Mr. Collins. Collusion is not a specific offense or a term of art in the Federal criminal law; conspiracy is.

Mr. Mueller. Yes.

Mr. Collins. In the colloquial context, known public context, "collusion" and "conspiracy" are essentially synonymous terms, correct?

Mr. Mueller. No.

Mr. Collins. If no, on page 180 of Volume I of your report, you wrote, as defined in legal dictionaries, collusion is largely synonymous with conspiracy as that crime is set forth in the general Federal conspiracy statute, 18 U.S.C. 371. You said at

your May 29 press conference and here today, you choose your words carefully. Are you sitting here today testifying to something different than what your report states?

Mr. Mueller. Well, what I'm asking is, if you can give me the citation, I can look at the citation and evaluate whether it is accurate.

Mr. Collins. Okay. Let me just be clarifying. You stated that you have stayed within the report. I just stated your report back to you. And you said that collusion and conspiracy were not synonymous terms. That was -- your answer was no.

Mr. Mueller. That's correct.

Mr. Collins. In that page 180 of Volume I of your report it says, as defined in legal dictionaries, collusion is largely synonymous with conspiracy as that crime is set forth in general conspiracy statute 18 U.S.C. 371. Now, you said you chose your words carefully. Are you contradicting your report right now?

Mr. Mueller. Not when I read it.

Mr. Collins. So you change your answer to yes then?

Mr. Mueller. No. No. If you look at the language --

Mr. Collins. I'm reading your report, sir. It's a yes or no answer.

Mr. Mueller. Page 180?

Mr. Collins. Page 180, Volume I. This is from your report.

Mr. Mueller. Correct. And I leave it with the report.

Mr. Collins. So the report says, yes, they are synonymous.

Mr. Mueller. Yes.

Mr. Collins. Hopefully, for finally, out of your own report, we can put to bed the collusion and conspiracy.

One last question as we're going through. Did you ever look into other countries investigated in the Russian's interference into our election? Were other countries investigated or found knowledge that they had interference in our election?

Mr. Mueller. I'm not going to discuss other matters.

Mr. Collins. With that, I yield back.

Chairman Nadler. The gentleman yields back.

The gentlelady from California.

Ms. Lofgren. Director Mueller, as you've heard from the chairman, we're mostly going to talk about obstruction of justice today. But the investigation of Russia's attack that started your investigation is why evidence of possible obstruction is serious.

To what extent did the Russian Government interfere in the 2016 Presidential election?

Mr. Mueller. Could you repeat that, ma'am?

Ms. Lofgren. To what extent did the Russian Government interfere in the 2016 Presidential election?

Mr. Mueller. Well, particularly when it came to computer crimes and the like, the government was implicated.

Ms. Lofgren. So you wrote, in Volume I, that the Russian Government interfered in the 2016 Presidential election in sweeping and systematic fashion. You also described in your

report that the then-Trump campaign chairman Paul Manafort shared with a Russian operative, Kilimnik, the campaign strategy for winning Democratic votes in Midwestern States and internal polling data of the campaign. Isn't that correct?

Mr. Mueller. Correct.

Ms. Lofgren. They also discussed the status of the Trump campaign and Manafort's strategy for winning Democratic votes in Midwestern States. Months before that meeting, Manafort had caused internal data to be shared with Kilimnik, and the sharing continued for some period of time after their August meeting. Isn't that correct?

Mr. Mueller. Accurate.

Ms. Lofgren. In fact, your investigation found that Manafort briefed Kilimnik on the state of the Trump campaign and Manafort's plan to win the election, and that briefing encompassed the campaign's messaging, its internal polling data. It also included discussion of battleground States, which Manafort identified as Michigan, Wisconsin, Pennsylvania, and Minnesota. Isn't that correct?

Mr. Mueller. That's correct.

Ms. Lofgren. Did your investigation determine who requested the polling data to be shared with Kilimnik?

Mr. Mueller. Well, I would direct you to the report and adopt what we have in the report with regard to that particular issue.



Ms. Lofgren. We don't have the redacted version. That's maybe another reason why we should get that for Volume I.

Based on your investigation, how could the Russian Government have used this campaign polling data to further its sweeping and systematic interference in the 2016 Presidential election?

Mr. Mueller. That's a little bit out of our path.

Ms. Lofgren. Fair enough.

Did your investigation find that the Russian Government perceived it would benefit from one of the candidates winning?

Mr. Mueller. Yes.

Ms. Lofgren. And which candidate would that be?

Mr. Mueller. Well, it would be Trump --

Ms. Lofgren. Correct.

Mr. Mueller. -- the President.

Ms. Lofgren. Now, the Trump campaign wasn't exactly reluctant to take Russian help. You wrote, it expected it would benefit electorally from information stolen and released through Russian efforts. Isn't that correct?

Mr. Mueller. That's correct.

Ms. Lofgren. Now, was the investigation's determination -- what was the investigation's determination regarding the frequency with which the Trump campaign made contact with the Russian Government?

Mr. Mueller. Well, I would have to refer you to the report on that.

Ms. Lofgren. Well, we went through and we counted 126 contacts between Russians or their agents and Trump campaign officials or their associates. So would that sound about right?

Mr. Mueller. I can't say. I understand the statistic and I believe it. I understand the statistic.

Ms. Lofgren. Well, Mr. Mueller, I appreciate your being here and your report. From your testimony and the report, I think the American people have learned several things. First, the Russians wanted Trump to win; second, the Russians went on a sweeping cyber influence campaign. The Russians hacked the DNC, and they got the Democratic game plan for the election. The Russian campaign chairman met with Russian agents and repeatedly gave them internal data, polling, and messaging in the battleground States.

So while the Russians were buying ads and creating propaganda to influence the outcome of the election, they were armed with inside information that they had stolen through hacking from the DNC and that they had been given by the Trump campaign chairman, Mr. Manafort.

My colleagues will probe the efforts undertaken to keep this information from becoming public, but I think it's important for the American people to understand the gravity of the underlying problem that your report uncovered.

And with that, Mr. Chairman, I would yield back.

Chairman Nadler. The gentlelady yields back.

The gentleman from Texas.

Mr. Ratcliffe. Good morning, Director. If you'll let me quickly summarize your opening statement this morning. You said in Volume I on the issue of conspiracy, the special counsel determined that the investigation did not establish that members of the Trump campaign conspired or coordinated with the Russian Government in its election interference activities. And then in Volume II, for reasons that you explain, the special counsel did not make a determination on whether there was an obstruction of justice crime committed by the President.

Is that fair?

Mr. Mueller. Yes, sir.

Mr. Ratcliffe. All right. Now, in explaining the special counsel did not make what you called a traditional prosecution or declination decision, the report on the bottom of page 2 of Volume II reads as follows: The evidence we obtained about the President's actions and intent presents difficult issues that prevent us from conclusively determining that no criminal conduct occurred. Accordingly, while this report does not conclude that the President committed a crime, it also does not exonerate him.

Now, I read that correctly?

Mr. Mueller. Yes.

Mr. Ratcliffe. All right. Now, your report, and today, you said that all times the special counsel team operated under was guided by and followed Justice Department policies and principles. So which DOJ policy or principle sets forth a legal standard that

an investigated person is not exonerated if their innocence from criminal conduct is not conclusively determined?

Mr. Mueller. Can you repeat the last part of that question?

Mr. Ratcliffe. Yeah. Which DOJ policy or principle sets forth a legal standard that an investigated person is not exonerated if their innocence from criminal conduct is not conclusively determined? Where does that language come from, Director? Where is the DOJ policy that says that?

Let me make it easier.

Mr. Mueller. Can I answer?

Mr. Ratcliffe. Is there --

Mr. Mueller. I'm sorry. Go ahead.

Mr. Ratcliffe. Can you give me an example other than Donald Trump where the Justice Department determined that an investigated person was not exonerated because their innocence was not conclusively determined?

Mr. Mueller. I cannot, but this is a unique situation.

Mr. Ratcliffe. Okay. Well, you can't -- time is short. I've got 5 minutes. Let's just leave it at you can't find it, because I'll tell you why. It doesn't exist. The special counsel's job -- nowhere does it say that you were to conclusively determine Donald Trump's innocence or that the special counsel report should determine whether or not to exonerate him.

It's not in any of the documents. It's not in your appointment order. It's not in the special counsel regulations.

It's not in the OLC opinions. It's not in the Justice manual, and it's not in the principles of Federal prosecution.

Nowhere do those words appear together because, respectfully, respectfully, Director, it was not the special counsel's job to conclusively determine Donald Trump's innocence or to exonerate him because the bedrock principle of our justice system is a presumption of innocence. It exists for everyone. Everyone is entitled to it, including sitting Presidents. And because there is a presumption of innocence, prosecutors never, ever need to conclusively determine it.

Now, Director, the special counsel applied this inverted burden of proof that I can't find and you said doesn't exist anywhere in the Department policies, and you used it to write a report. And the very first line of your report, the very first line of your report says, as you read this morning, it authorizes the special counsel to provide the Attorney General with a confidential report explaining the prosecution or declination decisions reached by the special counsel. That's the very first word of your report, right?

Mr. Mueller. That's correct.

Mr. Ratcliffe. Here's the problem, Director. The special counsel didn't do that. On Volume I, you did. On Volume II, with respect to potential obstruction of justice, the special counsel made neither a prosecution decision or a declination decision. You made no decision. You told us this morning and in your report

that you made no determination.

So, respectfully, Director, you didn't follow the special counsel regulations. It clearly says write a confidential report about decisions reached. Nowhere in here does it say write a report about decisions that weren't reached. You wrote 180 pages, 180 pages about decisions that weren't reached, about potential crimes that weren't charged or decided. And respectfully, respectfully, by doing that, you managed to violate every principle and the most sacred of traditions about prosecutors not offering extra prosecutorial analysis about potential crimes that aren't charged.

So Americans need to know this, as they listen to the Democrats and socialists on the other side of the aisle as they do dramatic readings from this report, that Volume II of this report was not authorized under the law to be written. It was written to a legal standard that does not exist at the Justice Department, and it was written in violation of every DOJ principle about extra prosecutorial commentary.

I agree with the chairman this morning when he said Donald Trump is not above the law. He's not. But he damn sure shouldn't be below the law, which is where Volume II of this report puts him.

Chairman Nadler. The gentleman's time is expired.

The gentlelady from Texas.

Ms. Jackson Lee. Thank you, Mr. Chairman.

Director Mueller, good morning. Your exchange with the gentlelady from California demonstrates what is at stake. The Trump campaign chair Paul Manafort was passing sensitive voter information and poller data to a Russian operative. And there were so many other ways that Russia subverted our democracy.

Together with the evidence in Volume I, I cannot think of a more serious need to investigate. So now I'm going to ask you some questions about obstruction of justice as it relates to Volume II.

On page 12 of Volume II, you state, we determined that there were sufficient factual and legal basis to further investigate potential obstruction of justice issues involving the President. Is that correct?

Mr. Mueller. And do you have a citation, ma'am?

Ms. Jackson Lee. Page 12, Volume II.

Mr. Mueller. And which portion of that page?

Ms. Jackson Lee. That is, we determined that there was a sufficient factual and legal basis to further investigate potential obstruction of justice issues involving the President. Is that correct?

Mr. Mueller. Yes.

Ms. Jackson Lee. Your report also described at least 10 separate instances of possible obstruction of justice that were investigated by you and your team. Is that correct?

Mr. Mueller. Yes.

Ms. Jackson Lee. In fact, the table of contents serves as a very good guide of some of the acts of that obstruction of justice that you investigated, and I put it up on the screen. On page 157 of Volume II, you describe those acts, and they range from the President's effort to curtail the special counsel's investigation, the President's further efforts to have the Attorney General take over the investigation, the President's orders Don McGahn to deny that the President tried to fire the special counsel, and many others. Is that correct?

Mr. Mueller. Yes.

Ms. Jackson Lee. I direct you now to what you wrote, Director Mueller: The President's pattern of conduct as a whole sheds light on the nature of the President's acts and the inferences that can be drawn about his intent.

Does that mean you have to investigate all of his conduct to ascertain true motive?

Mr. Mueller. No.

Ms. Jackson Lee. And when you talk about the President's pattern of conduct, that include the 10 possible acts of obstruction that you investigated. Is that correct? When you talk about the President's pattern of conduct, that would include the 10 possible acts of obstruction that you investigated, correct?

Mr. Mueller. I direct you to the report for how that is characterized.



Ms. Jackson Lee. Thank you.

Let me go to the screen again. And for each of those 10 potential instances of obstruction of justice, you analyzed three elements of a crime of obstruction of justice: an obstructive act, a nexus between the act and official proceeding, and corrupt intent. Is that correct?

Mr. Mueller. Yes.

Ms. Jackson Lee. You wrote on page 178, Volume II in your report, about corrupt intent: Actions by the President to end a criminal investigation into his own conduct to protect against personal embarrassment or legal liability would constitute a core example of corruptly motivated conduct. Is that correct?

Mr. Mueller. Yes.

Ms. Jackson Lee. To the screen again. Even with the evidence you did find, is it true, as you note on page 76 of Volume II, that the evidence does indicate that a thorough FBI investigation would uncover facts about the campaign and the President personally that the President could have understood to be crimes or that would give rise to legal, personal, and political concerns?

Mr. Mueller. I rely on the language of the report.

Ms. Jackson Lee. Is that relevant to potential obstruction of justice? Is that relevant to potential obstruction of justice?

Mr. Mueller. Yes.

Ms. Jackson Lee. You further elaborate on page 157,

obstruction of justice can be motivated by desire to protect noncriminal personal interests to protect against investigations where underlying criminal liability fall into a gray area or to avoid personal embarrassment. Is that correct?

Mr. Mueller. I have on the screen --

Ms. Jackson Lee. Is that correct on the screen?

Mr. Mueller. Can you repeat the question, now that I have the language on the screen?

Ms. Jackson Lee. Is it correct, as you further elaborate, obstruction of justice can be motivated by a direct desire to protect noncriminal personal interests to protect against investigations where underlying criminal liability falls into a gray area --

Mr. Mueller. Yes.

Ms. Jackson Lee. -- or to avoid -- is that true?

Mr. Mueller. Yes.

Ms. Jackson Lee. And is it true that the impact -- pardon?

Mr. Mueller. Can you read the last question?

Ms. Jackson Lee. The last question was --

Mr. Mueller. I want to make certain I got it accurate.

Ms. Jackson Lee. No. The last question was the language on the screen asking you if that's correct.

Mr. Mueller. Yes.

Ms. Jackson Lee. Okay. Does a conviction of obstruction of justice result potentially in a lot of years of -- a lot of years

of time in jail?

Mr. Mueller. Yes.

Well, again, can you repeat the question just to make certain that I have it accurate?

Ms. Jackson Lee. Does obstruction of justice warrant a lot of time in jail --

Mr. Mueller. Yes.

Ms. Jackson Lee. -- if you were convicted?

Mr. Mueller. Yes.

Ms. Jackson Lee. And if --

Chairman Nadler. The time of the gentlelady is expired.

The gentleman from Wisconsin.

Mr. Sensenbrenner. Thank you very much, Mr. Chairman.

Let me begin by reading the special counsel regulations by which you were appointed. It reads, quote, at the conclusion of the special counsel's work, he or she shall provide the Attorney General with a confidential report explaining the prosecution or declination's decisions reached by the special counsel. Is that correct?

Mr. Mueller. Yes.

Mr. Sensenbrenner. Okay. Now, when a regulation uses the word "shall" provide, does it mean that the individual is, in fact, obligated to provide what's being demanded by the regulation or statute, meaning you don't have any wiggle room, right?

Mr. Mueller. I'd have to look more closely at the statute.

Mr. Sensenbrenner. Well, I just read it to you.

Okay. Now, Volume II, page 1, your report boldly states, we determined not to make a traditional prosecutorial judgment. Is that correct?

Mr. Mueller. I'm trying to find that citation, Congressman.

Chairman Nadler. Director, could you speak more directly into the microphone, please?

Mr. Mueller. Yes.

Chairman Nadler. Thank you.

Mr. Sensenbrenner. It's Volume II, page --

Mr. Mueller. Mr. Chairman -- I am sorry.

Mr. Sensenbrenner. Volume II, page 1, it said, we determined not to make a traditional prosecutorial judgment.

Mr. Mueller. Yes.

Mr. Sensenbrenner. That's right in the beginning.

Now, since you decided under the OLC opinion that you couldn't prosecute a sitting President, meaning President Trump, why did we have all of this investigation of President Trump that the other side is talking about when you knew that you weren't going to prosecute him?

Mr. Mueller. Well, you don't know where the investigation is going to lie, and the OLC opinion itself says that you can continue the investigation even though you are not going to indict the President.

Mr. Sensenbrenner. Okay. Well, if you're not going to

indict the President, then you just continue fishing. And that's -- you know, that's my observation.

Mr. Mueller. Well --

Mr. Sensenbrenner. You know, sure -- my time is limited. Sure you can indict other people, but you can't indict the sitting President, right?

Mr. Mueller. That's true.

Mr. Sensenbrenner. Okay. Now, there are 182 pages in raw evidentiary material, including hundreds of references to 302, which are interviews by the FBI, for individuals who have never been cross-examined and which did not comply with the special counsel's governing regulation to explain the prosecution or declination decisions reached. Correct?

Mr. Mueller. And where are you reading from on that?

Mr. Sensenbrenner. I'm reading from my question.

Mr. Mueller. Then could you repeat it?

Mr. Sensenbrenner. Okay. You have 182 pages of raw evidentiary material with hundreds of references to 302s who have never been cross-examined and which didn't comply with the governing regulation to explain the prosecution or declaration -- declination decisions reached.

Mr. Mueller. This is one of those areas which I decline to discuss by --

Mr. Sensenbrenner. Okay. Then let --

Mr. Mueller. -- and would direct you to the report itself or

what is done on that --

Mr. Sensenbrenner. Well, I looked at 182 pages of it.

You know, let me switch gears. Mr. Chabot and I were on this committee during the Clinton impeachment. Now, while I recognize that the independent counsel statute under which Kenneth Starr operated is different from the special counsel's statute, he in a number of occasions in his report stated that the -- President Clinton's actions may have risen to impeachable conduct, recognizing that it is up to the House of Representatives to determine what conduct is impeachable.

You never used the term "raising" to impeachable conduct for any of the 10 instances that the gentlewoman from Texas did. Is it true that there's nothing in Volume II of the report that says that the President may have engaged in impeachable conduct?

Mr. Mueller. Well, we have studiously kept in the center of our investigation the -- our mandate, and our mandate does not go to other ways of addressing conduct. Our mandate goes to what -- developing the report and turning the report in to the Attorney General.

Mr. Sensenbrenner. With due respect, you know, it seems to me, you know, that there are a couple of statements that you made, you know, that said that this is not for me to decide, and the implication is that this is for this committee to decide.

Now, you didn't use the word "impeachable" conduct like Starr did. There was no statute to prevent you from using the word

"impeachable" conduct. And I go back to what Mr. Ratcliffe said, and that is, is that even the President is innocent until proven guilty.

My time is up.

Chairman Nadler. The gentleman's time is expired.

The gentleman from Tennessee.

Mr. Cohen. Thank you, Mr. Chair.

First, I'd just like to restate what Mr. Nadler said about your career. It's a model of rectitude, and I thank you.

Mr. Mueller. Thank you.

Mr. Cohen. Based upon your investigation, how did President Trump react to your appointment as special counsel?

Mr. Mueller. Again, I send you the report for where that is stated.

Mr. Cohen. Well, there is a quote from page 78 of your report, Volume II, which reads, when Sessions told the President that a special counsel had been appointed, the President slumped back in his chair and said, quote, oh, my god. This is terrible. This is the end of my Presidency. I'm F'ed, unquote.

Did Attorney General Sessions tell you about that little talk?

Mr. Mueller. I'm not sure --

Chairman Nadler. Director, please speak into the microphone.

Mr. Mueller. Oh, surely. My apologies.

I am not certain of the person who originally copied that

quote.

Mr. Cohen. Okay. Well, Sessions apparently said it, and one of his aides had it in his notes too, which I think you had, but that's become record. He wasn't pleased. He probably wasn't pleased with the special counsel and particularly you because of your outstanding reputation.

Mr. Mueller. Correct.

Mr. Cohen. Prior to your appointment, the Attorney General recused himself from the investigation because of his role in the 2016 campaign. Is that not correct?

Mr. Mueller. That's correct.

Mr. Cohen. Recusal means the Attorney General cannot be involved in the investigation. Is that correct?

Mr. Mueller. That's the effect of recusal, yes.

Mr. Cohen. And so instead, another Trump appointee, as you know Mr. Sessions was, Mr. Rosenstein became in charge of it. Is that correct?

Mr. Mueller. Yes.

Mr. Cohen. Wasn't Attorney General Sessions following the rules and professional advice of the Department of Justice ethics folks when he recused himself from the investigation?

Mr. Mueller. Yes.

Mr. Cohen. And yet the President repeatedly expressed his displeasure at Sessions' decision to follow those ethics rules to recuse himself from oversight of that investigation. Is that not



correct?

Mr. Mueller. That's correct based on what is written in the report.

Mr. Cohen. And the President's reaction to the recusal, as noted in the report, Mr. Bannon recalled that the President was mad, as mad as Bannon had ever seen him, and he screamed at McGahn about how weak Sessions was. Do you recall that from the report?

Mr. Mueller. That's in the report, yes.

Mr. Cohen. Despite knowing that Attorney General Sessions was not supposed to be involved in the investigation, the President still tried to get the Attorney General to unrecuse himself after you were appointed special counsel. Is that correct?

Mr. Mueller. Yes.

Mr. Cohen. In fact, your investigation found that at some point after your appointment, quote, the President called Sessions at his home and asked if he would unrecuse himself. Is that not true?

Mr. Mueller. It's true.

Mr. Cohen. Now, that wasn't the first time the President asked Sessions to unrecuse himself, was it?

Mr. Mueller. I know there were at least two occasions.

Mr. Cohen. And one of them was with Flynn, and one of them was when Sessions and McGahn flew to Mar-a-Largo to meet with the President. Sessions recalled that the President pulled him aside

to speak alone and suggest that he should do this unrecusal act, correct?

Mr. Mueller. Correct.

Mr. Cohen. And then when Michael Flynn -- a few days after Flynn entered a guilty plea for lying to Federal agents and indicated his intent to cooperate with that investigation, Trump asked to speak to Sessions alone again in the Oval Office and again asked Sessions to unrecuse himself. True?

Mr. Mueller. I refer you to the report for that.

Mr. Cohen. Page 109, Volume II. Thank you, sir.

Do you know of any point when the President personally expressed anger or frustrations at Sessions?

Mr. Mueller. I'd have to pass on that.

Mr. Cohen. Do you recall -- and I think it's at page 78 of Volume II, the President told Sessions, you were supposed to protect me, you were supposed to protect me, or words to that effect?

Mr. Mueller. Correct.

Mr. Cohen. And is the Attorney General supposed to be the Attorney General of the United States of America or the consigliere for the President?

Mr. Mueller. United States of America.

Mr. Cohen. Thank you, sir.

In fact, you wrote in your report that the President repeatedly sought to convince Sessions to unrecuse himself so

Sessions could supervise the investigation in a way that would restrict its scope. Is that correct?

Mr. Mueller. I rely on the report.

Mr. Cohen. How could Sessions have restricted the scope of your investigation?

Mr. Mueller. Well, I'm not going to speculate. If he -- quite obviously if he took over as Attorney General, he would have greater latitude in his actions that would enable him to do things that otherwise he could not.

Mr. Cohen. On page 113 you said the President believed that an unrecused Attorney General would play a protective role and could shield the President from the ongoing investigation.

Regardless of all that, I want to thank you, Director Mueller, for your life of rectitude and service to our country. It's clear from your report and the evidence that the President wanted former Attorney General Sessions to violate the Justice Department ethics rules by taking over your investigation and improperly interfering with it to protect himself and his campaign. Your findings are so important because in America nobody is above the law.

I yield back the balance of my time.

Chairman Nadler. I thank the gentleman for yielding back. The gentleman from Ohio.

Mr. Chabot. Thank you.

Director Mueller, my Democratic colleagues were very

disappointed in your report. They were expecting you to say something along the lines of, here's why President Trump deserves to be impeached, as much as Ken Starr did relative to President Clinton back about 20 years ago. Well, you didn't. So their strategy had to change.

Now they allege that there's plenty of evidence in your report to impeach the President but the American people just didn't read it. And this hearing today is their last best hope to build up some sort of ground swell across America to impeach President Trump. That's what this is really all about today.

Now, a few questions. On page 103 of Volume II of your report, when discussing the June 2016 Trump Tower meeting, you reference, quote, the firm that produced the Steele reporting, unquote. The name of that firm was Fusion GPS. Is that correct?

Mr. Mueller. And you're on page 103?

Mr. Chabot. 103, that's correct, Volume II. When you talk about the firm that produced the Steele reporting, the name of the firm that produced that was Fusion GPS. Is that correct?

Mr. Mueller. I'm not familiar with that. Could you --

Mr. Chabot. Let me just help you. It was. It's not a trick question. It was Fusion GPS.

Now, Fusion GPS produced the opposition research document widely known as the Steele dossier, and the owner of Fusion GPS was someone named Glenn Simpson. Are you familiar with --

Mr. Mueller. This is outside my purview.

Mr. Chabot. Okay. Glenn Simpson was never mentioned in the 448-page Mueller report, was he?

Mr. Mueller. Well, as I say, it's outside my purview, and it's being handled in the Department by others.

Mr. Chabot. Okay. Well, he was not. 448 pages, the owner of Fusion GPS that did the Steele dossier that started all this, he's not mentioned in there.

Let me move on. At the same time, Fusion GPS was working to collect opposition research on Donald Trump from foreign sources on behalf of the Clinton campaign and the Democratic National Committee. It also was representing a Russian-based company, Prevezon, which had been sanctioned by the U.S. Government. Are you aware of that?

Mr. Mueller. That's outside my purview.

Mr. Chabot. Okay. Thank you.

One of the key players in the -- I'll go to something different. One of the key players in the June 2016 Trump Tower meeting was Natalia Veselnitskaya, who you described in your report as a Russian attorney who advocated for the repeal of the Magnitsky Act. Veselnitskaya had been working with none other than Glenn Simpson and Fusion GPS since at least early 2014. Are you aware of that?

Mr. Mueller. Outside my purview.

Mr. Chabot. Thank you.

But you didn't mention that or her connections to Glenn

Simpson at Fusion GPS in your report at all.

Let me move on. Now, NBC News has reported the following: quote, Russian lawyer Natalia Veselnitskaya says she first received the supposedly incriminating information she brought to Trump Tower describing alleged tax evasion and donation to Democrats from none other than Glenn Simpson, the Fusion GPS owner.

You didn't include that in the report, and I assume --

RPTR BRYANT

EDTR SECKMAN

[9:32 a.m.]

Mr. Mueller. -- it is a matter being handled by others at the Department of Justice.

Mr. Chabot. Thank you. Now, your report spends 14 pages discussing the June 9, 2016, Trump Tower meeting. It would be fair to say, would it not, that you spent significant resources investigating that meeting?

Mr. Mueller. I refer you to the report.

Mr. Chabot. Okay. And President Trump wasn't at the meeting?

Mr. Mueller. No, he was not.

Mr. Chabot. Thank you. Now, in stark contrast to the actions of the Trump campaign, we know that the Clinton campaign did pay Fusion GPS to gather dirt on the Trump campaign from persons associated with foreign governments. But your report doesn't mention a thing about Fusion GPS in it, and you didn't investigate Fusion GPS' connections to Russia.

So let me just ask you this: Can you see that, from neglecting to mention Glenn Simpson and Fusion GPS' involvement with the Clinton campaign to focusing on a brief meeting at the Trump Tower that produced nothing to ignoring the Clinton campaign's own ties to Fusion GPS, why some view your report as a

pretty one-sided attack on the President?

Mr. Mueller. Well, I tell you, it is still outside my purview.

Mr. Chabot. And I would just note, finally, that I guess it is just by chance, by coincidence that the things left out of the report tended to be favorable to the President.

Chairman Nadler. Your time has expired.

Mr. Chabot. My time has expired.

Chairman Nadler. The gentleman from Georgia.

Mr. Johnson of Georgia. Thank you.

Director Mueller, I would like to get us back on track here. Your investigation found that President Trump directed White House Counsel Don McGahn to fire you. Isn't that correct?

Mr. Mueller. True.

Mr. Johnson of Georgia. And the President claimed that he wanted to fire you because you had supposed conflicts of interest. Isn't that correct?

Mr. Mueller. True.

Mr. Johnson of Georgia. You had no conflicts of interest that required your removal. Isn't that a fact?

Mr. Mueller. Also correct.

Mr. Johnson of Georgia. And, in fact, Don McGahn advised the President that the asserted conflicts were, in his words, silly and not real conflicts. Isn't that true?

Mr. Mueller. I refer to the report on that episode.



Mr. Johnson of Georgia. Well, page 85 of Volume II speaks to that. And, also, Director Mueller, DOJ Ethics officials confirmed that you had no conflicts that would prevent you from serving as special counsel. Isn't that correct?

Mr. Mueller. That is correct.

Mr. Johnson of Georgia. But despite Don McGahn and the Department of Justice guidance, around May 23, 2017, the President, quote, prodded McGahn to complain to Deputy Attorney General Rosenstein about these supposed conflicts of interest, correct?

Mr. Mueller. Correct.

Mr. Johnson of Georgia. And McGahn declined to call Rosenstein -- or Rosenstein, I am sorry -- telling the President that it would look like still trying to meddle in the investigation and knocking out Mueller would be another fact used to claim obstruction of justice. Isn't that correct?

Mr. Mueller. Generally so, yes.

Mr. Johnson of Georgia. And, in other words, Director Mueller, the White House counsel told the President that if he tried to remove you that that could be another basis to allege that the President was obstructing justice, correct?

Mr. Mueller. That is generally correct, yes.

Mr. Johnson of Georgia. Now, I would like to review what happened after the President was warned about obstructing justice. On Tuesday, June --

Mr. Mueller. I am sorry, Congressman. Do you have a citation for that?

Mr. Johnson of Georgia. Yes. Volume II, page 81 --

Mr. Mueller. Thank you.

Mr. Johnson of Georgia. -- and 82. Now, I would like to review what happened after the President was warned about obstructing justice. It is true that, on Tuesday, June 13, 2017, the President dictated a press statement stating he had, quote, no intention of firing you, correct?

Mr. Mueller. Correct.

Mr. Johnson of Georgia. But the following day, June 14th, the media reported for the first time that you were investigating the President for obstruction of justice, correct?

Mr. Mueller. Correct.

Mr. Johnson of Georgia. And then, after learning for the first time that he was under investigation, the very next day the President, quote, issued a series of tweets acknowledging the existence of the obstruction investigation and criticizing it. Isn't that correct?

Mr. Mueller. Generally so.

Mr. Johnson of Georgia. And then, on Saturday, June 17th, 2 days later, the President called Don McGahn at home from Camp David on a Saturday to talk about you. Isn't that correct?

Mr. Mueller. Correct.

Mr. Johnson of Georgia. What was the significant -- what was

significant about that first weekend phone call that Don McGahn took from President Trump?

Mr. Mueller. I am going to ask you to rely on what we wrote about those incidents.

Mr. Johnson of Georgia. Well, you wrote in you your report that on -- at page 85, Volume II, that, on Saturday, June 17, 2017, the President called McGahn at home to have the special counsel removed. Now, did the President call Don McGahn more than once that day?

Mr. Mueller. Well --

Mr. Johnson of Georgia. I think there were two calls.

Chairman Nadler. Speak into the mike, please.

Mr. Mueller. I am sorry about that.

Mr. Johnson of Georgia. On page 85 of your report, you wrote, quote, on the first call, McGahn recalled that the President said something like, quote, "You got to do this, you got to call Rod," correct?

Mr. Mueller. Correct.

Mr. Johnson of Georgia. And your investigation and report found that Don McGahn was perturbed, to use your words, by the President's request to call Rod Rosenstein to fire him. Isn't that correct?

Mr. Mueller. Well, there was a continuous colloquy. There was a continuous involvement of Don McGahn responding to the President's entreaties.

Mr. Johnson of Georgia. And he did not want to put himself in the middle of that. He did not want to have a role in asking the Attorney General to fire the special counsel, correct?

Mr. Mueller. Well, I would again refer you to the report and the way it is characterized in the report.

Mr. Johnson of Georgia. Thank you. At Volume II, page 85, it states that he didn't want to have the Attorney General -- he didn't want to have a role in trying to fire the Attorney General.

So, at this point, I will yield back.

Chairman Nadler. The gentleman's time is expired. The gentleman from Texas.

Mr. Gohmert. Thank you, Mr. Chairman.

Mr. Mueller, well, first, let me ask unanimous consent, Mr. Chairman, to submit this article "Robert Mueller: Unmasked" for the record.

Chairman Nadler. Without objection.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Mr. Gohmert. Now, Mr. Mueller, who wrote the 9-minute comments you read at your May 29th press conference?

Mr. Mueller. I am not going to get into that.

Mr. Gohmert. Okay. So that is what I thought. You didn't write it.

A 2013 puff piece in The Washingtonian about Comey said, basically, when Comey called, you would drop everything you were doing. It gave examples: You were having dinner with your wife and daughter. Comey calls. You drop everything and go.

The article quoted Comey as saying: If a train were coming down the track, and I quote, at least Bob Mueller will be standing on the tracks with me.

You and James Comey have been good friends or were good friends for many years, correct?

Mr. Mueller. No, we were business associates. We both started off in the Justice Department about the same time.

Mr. Gohmert. You were good friends. You can work together and not be friends, but you and Comey were friends.

Mr. Mueller. We were friends.

Mr. Gohmert. That is my question. Thank you for getting to the answer.

Now, before you were appointed as special counsel, had you talked to James Comey in the preceding 6 months?

Mr. Mueller. No.

Mr. Gohmert. When you were appointed as special counsel, was

President Trump's firing of Comey something you anticipated investigating, potentially obstruction of justice?

Mr. Mueller. I am not going to get into that, internal deliberations at the Justice Department.

Mr. Gohmert. Actually, it goes to your credibility, and maybe you have been away from the courtroom for a while. Credibility is always relevant. It is always material. And that goes for you too. You are a witness before us.

Let me ask you, when you talked to President Trump the day before he appointed -- or you were appointed as special counsel -- you were talking to him about the FBI Director position again -- did he --

Mr. Mueller. That is not --

Mr. Gohmert. -- mention the firing of James Comey --

Mr. Mueller. -- not as a candidate. I was asked --

Mr. Gohmert. Did he mention the firing of James Comey in your discussion with him?

Mr. Mueller. I cannot remember.

Mr. Gohmert. Pardon?

Mr. Mueller. I cannot remember. I don't believe so, but I am not going to be specific.

Mr. Gohmert. You don't remember. But if he did, you could have been a fact witness as to the President's comments and state of mind on firing James Comey.

Mr. Mueller. I suppose that is possible.

Mr. Gohmert. Yeah. So most prosecutors would want to make sure there was no appearance of impropriety, but in your case, you hired a bunch of people that did not like the President.

Let me ask you, when did you first learn of Peter Strzok's animus toward Donald Trump?

Mr. Mueller. In the summer of 2017.

Mr. Gohmert. You didn't know before he was hired?

Mr. Mueller. I am sorry?

Mr. Gohmert. You didn't know before he was hired for your team?

Mr. Mueller. Know what?

Mr. Gohmert. Peter Strzok hated Trump.

Mr. Mueller. Okay.

Mr. Gohmert. You didn't know that before he was made part of your team. Is that what you are saying?

Mr. Mueller. No, I did not know that.

Mr. Gohmert. All right. When did you first learn --

Mr. Mueller. And, actually, when I did find out, I acted swiftly to have him reassigned elsewhere in the FBI.

Mr. Gohmert. Well, there is some discussion about how swift that was. But when did you learn of the ongoing affair he was having with Lisa Page?

Mr. Mueller. About the same time that I learned of Strzok.

Mr. Gohmert. Did you ever order anybody to investigate the deletion of all of their texts off of their government phones?



Mr. Mueller. Once we found that Peter Strzok was author of --

Mr. Gohmert. Did you ever order --

Mr. Mueller. May I finish?

Mr. Gohmert. Well, you are not answering my question. Did you order an investigation into the deletion and reformatting of their government phones?

Mr. Mueller. No. There was an IG investigation ongoing.

Mr. Gohmert. Listen. Regarding collusion or conspiracy, you didn't find evidence of any agreement -- I am quoting you -- among the Trump campaign officials and any Russia-linked officials to interfere with our U.S. election, correct?

Mr. Mueller. Correct.

Mr. Gohmert. So you also note in the report that an element of any of those obstructions you referenced requires a corrupt state of mind, correct?

Mr. Mueller. Corrupt intent, correct.

Mr. Gohmert. Right. And if somebody knows they did not conspire with anybody from Russia to affect the election, and they see the big Justice Department with people that hate that person coming after them, and then a special counsel appointed who hires a dozen or more people that hate that person, and he knows he is innocent. He is not corruptly acting in order to see that justice is done. What he is doing is not obstructing justice. He is pursuing justice, and the fact that you ran it out 2 years means

you perpetuated injustice.

Mr. Mueller. I take your question.

Chairman Nadler. The gentleman's time is expired. The witness may answer the question.

Mr. Mueller. I take your question.

Chairman Nadler. The gentleman from Florida.

Mr. Deutch. Director Mueller, I would like to get back to your findings covering June of 2017. There was a bombshell article that reported that the President of the United States was personally under investigation for obstruction of justice. And you said in your report, on page 90, Volume II, and I quote: News of the obstruction investigation prompted the President to call McGahn and seek to have the special counsel removed, close quote.

And then, in your report, you wrote about multiple calls from the President to White House Counsel Don McGahn. And regarding the second call, you wrote, and I quote: McGahn recalled that the President was more direct, saying something like: Call Rod, tell Rod that Mueller has conflicts and can't be the special counsel. McGahn recalled the President telling him: Mueller has to go and call me back when you do it.

Director Mueller, did McGahn understand what the President was ordering him to do?

Mr. Mueller. I direct you to the -- what we have written in the report in terms of characterizing his feelings.

Mr. Deutch. And in the report, it says, quote: McGahn

understood the President to be saying that the special counsel had to be removed. You also say, on page 86, that, quote, McGahn considered the President's request to be an inflection point, and he wanted to hit the brakes, and he felt trapped, and McGahn decided he had to resign.

McGahn took action to prepare to resign. Isn't that correct?

Mr. Mueller. I direct you again to the report.

Mr. Deutch. And, in fact, that very day he went to the White House, and quoting your report, you said, quote: He then drove to the office to pack his belongings and submit his resignation letter, close quote.

Mr. Mueller. That is directly from the report.

Mr. Deutch. It is. And before he resigned, however, he called the President's chief of staff, Reince Priebus, and he called the President's senior adviser, Steve Bannon. Do you recall what McGahn told them?

Mr. Mueller. Whatever was said will appear in the report.

Mr. Deutch. It is. It is. And it says on page 87, quote: Priebus recalled that McGahn said that the President asked him to do crazy expletive -- in other words, crazy stuff. The White House counsel thought that the President's request was completely out of bounds. He said the President asked him to do something crazy. It was wrong, and he was prepared to resign over it.

Now, these are extraordinarily troubling events, but you found White House Counsel McGahn to be a credible witness. Isn't

that correct?

Mr. Mueller. Correct.

Mr. Deutch. Director Mueller, the most important question I have for you today is why? Director Mueller, why did the President of the United States want you fired?

Mr. Mueller. I can't answer that question.

Mr. Deutch. Well, on page 89 in your report on Volume II, you said, and I quote: Substantial evidence indicates that the President's attempts to remove the special counsel were linked to the special counsel's oversight of investigations that involved the President's conduct and, most immediately, to reports that the President was being investigated for potential obstruction of justice, close quote.

Director Mueller, you found evidence, as you lay out in your report, that the President wanted to fire you because you were investigating him for obstruction of justice. Isn't that correct?

Mr. Mueller. That is what it says in the report, yes. And I go -- I stand behind the report.

Mr. Deutch. Director Mueller, that shouldn't happen in America. No President should be able to escape investigation by abusing his power. But that is what you testified to in your report. The President ordered you fired. The White House counsel knew it was wrong. The President knew it was wrong. In your report, it says there is also evidence the President knew he should not have made those calls to McGahn. But the President did

it anyway. He did it anyway. Anyone else who blatantly interfered with a criminal investigation like yours would be arrested and indicted on charges of obstruction of justice.

Director Mueller, you determined that you were barred from indicting a sitting President. We have already talked about that today. That is exactly why this committee must hold the President accountable.

I yield back.

Chairman Nadler. The gentleman yields back.

The gentlelady from Alabama.

Mrs. Roby. Director Mueller, you just said, in response to two different lines of questioning, that you would refer, as it relates to this firing discussion, that I would refer you to the report and the way it was characterized in the report.

Importantly, the President never said "fire Mueller" or "end the investigation," and one doesn't necessitate the other. And McGahn, in fact, did not resign, he stuck around for a year and a half.

On March 24th, Attorney General Barr informed the committee that he had received the special counsel's report, and it was not until April 18th that the Attorney General released the report to Congress and the public. When you submitted your report to the Attorney General, did you deliver a redacted version of the report so that he would be able to release it to Congress and the public without delay, pursuant to his announcement of his intention to do

so during his confirmation hearing?

Mr. Mueller. I am not going to engage in discussion about what happened after the production of our report.

Mrs. Roby. Had the Attorney General asked you to provide a redacted version of the report?

Mr. Mueller. We worked on the redacted versions together.

Mrs. Roby. Did he ask you for a version where the grand jury material was separated?

Mr. Mueller. I am not going to get into details.

Mrs. Roby. Is it your belief that an unredacted version of the report could be released to Congress or the public?

Mr. Mueller. That is not within my purview.

Mrs. Roby. In the Starr investigation of President Clinton, it was the special prosecutor who went to court to receive permission to unredact grand jury material, rule 6(e) material. Why did you not take a similar action so Congress could view this material?

Mr. Mueller. We had a process that we were operating on with the Attorney General's Office.

Mrs. Roby. Are you aware of any Attorney General going to court to receive similar permission to unredact 6(e) material?

Mr. Mueller. I am not aware of that being done.

Mrs. Roby. The Attorney General released the special counsel's report with minimal redactions to the public and an even lesser redacted version to Congress. Did you write the report

with the expectation that it would be released publicly?

Mr. Mueller. No, we did not have an expectation. We wrote the report, understanding that it was demanded by the statute and would go to the Attorney General for further review.

Mrs. Roby. And pursuant to the special counsel regulations, who is the only party that must receive the charging decision resulting from the special counsel's investigation?

Mr. Mueller. With regard to the President or generally?

Mrs. Roby. No, generally.

Mr. Mueller. Attorney General.

Mrs. Roby. At Attorney General Barr's confirmation hearing, he made it clear that he intended to release your report to the public. Do you remember how much of your report had been written at that point?

Mr. Mueller. I do not.

Mrs. Roby. Were there significant changes in tone or substance of the report made after the announcement that the report would be made available to Congress and the public?

Mr. Mueller. I can't get into that.

Mrs. Roby. During the Senate testimony of Attorney General William Barr, Senator Kamala Harris asked Mr. Barr if he had looked at all the underlying evidence that the special counsel's team had gathered. He stated that he had not.

So I am going to ask you, did you personally review all of the underlying evidence gathered in your investigation?

Mr. Mueller. Well, to the extent that it came through the Special Counsel's Office, yes.

Mrs. Roby. Did any single member of your team review all the underlying evidence gathered during the course of your investigation?

Mr. Mueller. As has been recited here today, a substantial amount of work was done, whether it be search warrants or --

Mrs. Roby. My point is there is no one member of the team that looked at everything.

Mr. Mueller. That is what I am trying to get at.

Mrs. Roby. Okay. It is fair to say that, in an investigation as comprehensive as yours, it is normal that different members of the team would have reviewed different sets of documents and few, if anyone, would have reviewed all of the underlying --

Mr. Mueller. Thank you. Yes.

Mrs. Roby. How many of the approximately 500 interviews conducted by the special counsel did you attend personally?

Mr. Mueller. Very few.

Mrs. Roby. On March 27, 2019, you wrote a letter to the Attorney General essentially complaining about the media coverage of your report. You wrote, and I quote: The summary letter the Department sent to Congress and released to the public late in the afternoon of March 24 did not fully capture the context, nature, and substance of this office's work and conclusions. We



communicated that concern to the Department on the morning of March 25th. There is now public confusion about critical aspects of the result of our investigation.

Who wrote that March 27th letter?

Mr. Mueller. Well, I can't get into who wrote it, the internal deliberations.

Mrs. Roby. But you signed it?

Mr. Mueller. What I will say is the letter stands for itself.

Mrs. Roby. Okay. Why did you write a formal letter since you had already called the Attorney General to express those concerns?

Mr. Mueller. I can't get into that, internal deliberations.

Mrs. Roby. Did you authorize the letter's release to the media, or was it leaked?

Mr. Mueller. I have no knowledge on either.

Mrs. Roby. Well, you went nearly 2 years without a leak. Why was this letter leaked?

Mr. Mueller. Well, I can't get into it.

Mrs. Roby. Was this letter written and leaked for the express purpose of attempting to change the narrative about the conclusions of your report, and was anything in Attorney General Barr's letter referred to as principal conclusions inaccurate?

Chairman Nadler. The time of the gentlelady has expired.

Mrs. Roby. May he answer the question, please?

Mr. Mueller. The question is?

Chairman Nadler. Yes, you may answer the question.

Mrs. Roby. Was anything in Attorney General Barr's letter referred to as the principal conclusions letter dated March 24th inaccurate?

Mr. Mueller. Well, I am not going to get into that.

Chairman Nadler. The time of the gentlelady has expired.  
The gentlelady from California.

Ms. Bass. Thank you, Mr. Chair.

Director Mueller, as you know, we are focusing on five obstruction episodes today. I would like to ask you about the second of those five obstruction episodes. It is in the section of your report beginning on page 113 of Volume II entitled, quote, "The President orders McGahn to deny that the President tried to fire the special counsel," end quote.

On January 25th, 2018, The New York Times reported that, quote: The President had ordered McGahn to have the Department of Justice fire you.

Is that correct?

Mr. Mueller. Correct.

Ms. Bass. And that story related to the events you already testified about here today, the President's calls to McGahn to have you removed, correct?

Mr. Mueller. Correct.

Ms. Bass. After the news broke, did the President go on TV

and deny the story?

Mr. Mueller. I do not know.

Ms. Bass. In fact, the President said, quote: Fake news, folks, fake news, a typical New York Times fake story, end quote. Correct?

Mr. Mueller. Correct.

Ms. Bass. But your investigation actually found substantial evidence that McGahn was ordered by the President to fire you, correct?

Mr. Mueller. Yes.

Ms. Bass. Did the President's personal lawyer do something the following day in response to that news report?

Mr. Mueller. I would refer you to the coverage of this in the report.

Ms. Bass. On page 114, quote: On January 26, 2018, the President's personal counsel called McGahn's attorney and said that the President wanted McGahn to put out a statement denying that he had been asked to fire the special counsel, end quote.

Did McGahn do what the President asked?

Mr. Mueller. I refer you to the report.

Ms. Bass. Communicating through his personal attorney, McGahn refused because he said, quote, that the Times story was accurate in reporting that the President wanted the special counsel removed. Isn't that right?

Mr. Mueller. I believe it is, but I refer you again to the

report.

Ms. Bass. Okay. So Mr. McGahn, through his personal attorney, told the President that he was not going to lie. Is that right?

Mr. Mueller. True.

Ms. Bass. Did the President drop the issue?

Mr. Mueller. I refer to the write-up of this in the report.

Ms. Bass. Okay. Next, the President told the White House staff secretary, Rob Porter, to try to pressure McGahn to make a false denial. Is that correct?

Mr. Mueller. That is correct.

Ms. Bass. What did he actually direct Porter to do?

Mr. Mueller. And I send you back to the report.

Ms. Bass. Okay. Well, on page 113, it says, quote: The President then directed Porter to tell McGahn to create a record to make it clear that the President never directed McGahn to fire you, end quote. Is that correct?

Mr. Mueller. That is as it is stated in the report.

Ms. Bass. And you found, quote, the President said he wanted McGahn to write a letter to the file for our records, correct?

Mr. Mueller. Correct.

Ms. Bass. And to be clear, the President is asking his White House counsel, Don McGahn, to create a record that McGahn believed to be untrue while you were in the midst of investigating the President for obstruction of justice, correct?

Mr. Mueller. Generally correct.

Ms. Bass. And Mr. McGahn was an important witness in that investigation, wasn't he?

Mr. Mueller. I would have to say yes.

Ms. Bass. Did the President tell Porter to threaten McGahn if he didn't create the written denial?

Mr. Mueller. I would refer you to the write-up of it in the report.

Ms. Bass. In fact, didn't the President say, quote, and this is on page 116, "If he doesn't write a letter, then maybe I will have to get rid of him," end quote?

Mr. Mueller. Yes.

Ms. Bass. Did Porter deliver that threat?

Mr. Mueller. I again refer you to the discussion that is found on page 115.

Ms. Bass. Okay. But the President still didn't give up, did he? So the President told McGahn directly to deny that the President told him to have you fired. Can you tell me exactly what happened?

Mr. Mueller. I can't beyond what is in the report.

Ms. Bass. Well, on page 116, it says: The President met him in the Oval Office. Quote: The President began the Oval Office meeting by telling McGahn that The New York Times story didn't look good and McGahn needed to correct it.

Is that correct?

Mr. Mueller. As it is written in the report, yes.

Ms. Bass. The President asked McGahn whether he would do a correction and McGahn said no, correct?

Mr. Mueller. That is accurate.

Ms. Bass. Well, Mr. Mueller, thank you for your investigation uncovering this very disturbing evidence. My friend Mr. Richmond will have additional questions on the subject. However, it is clear to me if anyone else had ordered a witness to create a false record and cover up acts that are the subject of a law enforcement investigation, that person would be facing criminal charges.

I yield back my time.

Chairman Nadler. The gentlelady yields back.

The gentleman from Ohio.

Mr. Jordan. Director, the FBI interviewed Joseph Mifsud on February 10, 2017. In that interview, Mr. Mifsud lied. You point this out on page 193, Volume I. Mifsud denied. Mifsud also falsely stated. In addition, Mifsud omitted.

Three times he lied to the FBI, yet you didn't charge him with a crime. Why not?

Mr. Mueller. Excuse me, did you say 1 -- I am sorry, did you say 193?

Mr. Jordan. Volume I, 193. He lied three times. You point it out in the report. Why didn't you charge him with a crime?

Mr. Mueller. I can't get into internal deliberations with

regard to who would or would not be charged.

Mr. Jordan. You charged a lot of other people for making false statements. Let's remember this, let's remember this: In 2016, the FBI did something they probably haven't done before. They spied on two American citizens associated with the Presidential campaign: George Papadopoulos and Carter Page.

With Carter Page, they went to the FISA court. They used the now famous dossier as part of the reason they were able to get the warrant and spy on Carter Page for the better part of a year. With Mr. Papadopoulos, they didn't go to the court. They used human sources, all kinds of -- from about the moment Papadopoulos joins the Trump campaign, you got all these people all around the world starting to swirl around him. Names like Halper, Downer, Mifsud, Thompson, meeting in Rome, London, all kinds of places. The FBI even sent, even sent a lady posing as somebody else, went by the name Azra Turk, even dispatched her to London to spy on Mr. Papadopoulos. In one of these meetings, Mr. Papadopoulos is talking to a foreign diplomat, and he tells the diplomat Russians have dirt on Clinton. That diplomat then contacts the FBI, and the FBI opens an investigation based on that fact.

You point this out on page 1 of the report. July 31st, 2016, they open the investigation based on that piece of information. Diplomat tells Papadopoulos Russians have dirt -- excuse me, Papadopoulos tells the diplomat Russians have dirt on Clinton. The diplomat tells the FBI. What I am wondering is who told

Papadopoulos? How did he find out?

Mr. Mueller. I can't get into the evidentiary --

Mr. Jordan. Yes, you can, because you wrote about it. You gave us the answer. Page 192 of the report you tell us who told him, Joseph Mifsud. Joseph Mifsud is the guy who told Joseph Papadopoulos, the mysterious professor who lives in Rome and London, works and teaches at two different universities; this is the guy who told Papadopoulos. He is the guy who starts it all. And when the FBI interviews him, he lies three times, and yet you don't charge him with a crime.

You charge Rick Gates for false statements. You charge Paul Manafort for false statements. You charge Michael Cohen with false statements. You charge Michael Flynn, a three-star general, with false statements. But the guy who puts the country through this whole saga, starts it all -- for 3 years we have lived this now -- he lies and you guys don't charge him. And I am curious as to why.

Mr. Mueller. Well, I can't get into it. And it is obvious I think that we can't get into charging decisions.

Mr. Jordan. When the FBI interviewed him in February -- the FBI interviews him in February. When the Special Counsel's Office interviewed Mifsud, did he lie to you guys too?

Mr. Mueller. I can't get into that.

Mr. Jordan. Did you interview Mifsud?

Mr. Mueller. I can't get into that.



Mr. Jordan. Is Mifsud Western intelligence or Russian intelligence?

Mr. Mueller. I can't get into that.

Mr. Jordan. A lot of things you can't get into. What is interesting: You can charge 13 Russians no one's ever heard of, no one's ever seen. No one's ever going to hear of them. No one's ever going to see them. You can charge them. You can charge all kinds of people who are around the President with false statements. But the guy who launches everything, the guy who puts this whole story in motion, you can't charge him. I think that is amazing.

Mr. Mueller. I am not certain -- I am not certain I agree with your characterization.

Mr. Jordan. Well, I am reading from your report. Mifsud told Papadopoulos. Papadopoulos tells the diplomat. The diplomat tells the FBI. The FBI opens the investigation July 31st, 2016. And here we are 3 years later, July of 2019. The country's been put through this, and the central figure who launches it all lies to us, and you guys don't hunt him down and interview him again, and you don't charge him with a crime.

Now, here is the good news. Here is the good news. The President was falsely accused of conspiracy. The FBI does a 10-month investigation. And James Comey, when we deposed him a year ago, told us at that point they had nothing. You do a 22-month investigation. At the end of that 22 months, you find no

conspiracy. And what do the Democrats want to do? They want to keep investigating. They want to keep going.

Maybe a better course of action, maybe a better course of action is to figure out how the false accusations started. Maybe it is to go back and actually figure out why Joseph Mifsud was lying to the FBI. And here is the good news. Here is the good news. That is exactly what Bill Barr is doing, and thank goodness for that. That is exactly what the Attorney General and John Durham are doing. They are going to find out why we went through this 3-year --

Chairman Nadler. The time of the gentleman --

Mr. Jordan. -- saga and get to the bottom of it.

Chairman Nadler. The time of the gentleman has expired.

In a moment, we will take a very brief 5-minute break.

First, I ask everyone in the room to please remain seated and quiet while the witness exits the room. I also want to announce to those in the audience that you may not be guaranteed your seat if you leave the hearing room at this time. At this time, the committee will stand in a very short recess.

[Recess.]

Chairman Nadler. People, please take their seats before the special counsel returns.

The gentleman from Louisiana, Mr. Richmond.

Mr. Richmond. Thank you, Mr. Chairman.

Mr. Mueller, Congressman Deutch addressed Trump's request to

McGahn to fire you. Representative Bass talked about the President's request of McGahn to deny the fact that the President made that request.

I want to pick up where they left off, and I want to pick up with the President's personal lawyer. In fact, there was evidence that the President's personal lawyer was alarmed at the prospect of the President meeting with Mr. McGahn to discuss Mr. McGahn's refusal to deny The New York Times report about the President trying to fire you, correct?

Mr. Mueller. Correct.

Mr. Richmond. In fact, the President's counsel was so alarmed by the prospect of the President's meeting with McGahn that he called Mr. McGahn's counsel and said that McGahn could not resign no matter what happened in the Oval Office that day, correct?

Mr. Mueller. Correct.

Mr. Richmond. So it is accurate to say that the President knew that he was asking McGahn to deny facts that McGahn, quote, had repeatedly said were accurate, unquote. Isn't that right?

Mr. Mueller. Correct.

Mr. Richmond. Your investigation also found, quote: By the time of the Oval Office meeting with the President, the President was aware, one, that McGahn did not think the story was false; two, did not want to issue a statement or create a written record denying facts that McGahn believed to be true. The President

nevertheless persisted and asked McGahn to repudiate facts that McGahn had repeatedly said were accurate.

Isn't that correct?

Mr. Mueller. Generally true.

Mr. Richmond. I believe that is on page 119. Thank you. In other words, the President was trying to force McGahn to say something that McGahn did not believe to be true.

Mr. Mueller. That is accurate.

Mr. Richmond. I want to reference you to a slide, and it is on page 120, and it says: Substantial evidence indicates that in repeatedly urging McGahn to dispute that he was ordered to have the special counsel terminated, the President acted for the purpose of influencing McGahn's account in order to deflect or prevent further scrutiny of the President's conduct towards the investigation.

Mr. Mueller. That is accurate.

Mr. Richmond. Can you explain what you meant there?

Mr. Mueller. I am just going to leave it as it appears in the report.

Mr. Richmond. So it is fair to say the President tried to protect himself by asking staff to falsify records relevant to an ongoing investigation?

Mr. Mueller. I would say that is generally a summary.

Mr. Richmond. Would you say that that action, the President tried to hamper the investigation by asking staff to falsify

records relevant to your investigation?

Mr. Mueller. I am just going to refer you to the report, if I could, for review of that episode.

Mr. Richmond. Thank you. Also, the President's attempts to get McGahn to create a false written record were related to Mr. Trump's concerns about your obstruction of justice inquiry, correct?

Mr. Mueller. I believe that to be true.

Mr. Richmond. In fact, at that same Oval Office meeting, did the President also ask McGahn why he had told -- quote, "why he had told Special Counsel's Office investigators that the President told him to have you removed," unquote?

Mr. Mueller. And what was the question, sir, if I might?

Mr. Richmond. Let me go to the next one. The President, quote, criticized McGahn for telling your office about the June 17, 2017, events when he told McGahn to have you removed, correct?

Mr. Mueller. Correct.

Mr. Richmond. In other words, the President was criticizing his White House counsel for telling law enforcement officials what he believed to be the truth.

Mr. Mueller. I again go back to the text of the report.

Mr. Richmond. Well, let me go a little bit further. Would it have been a crime if Mr. McGahn had lied to you about the President ordering him to fire you?

Mr. Mueller. I don't want to speculate.

Mr. Richmond. Okay. Is it true that you charged multiple people associated with the President for lying to you during your investigation?

Mr. Mueller. That is accurate.

Mr. Richmond. The President also complained that his staff were taking notes during the meeting about firing McGahn. Is that correct?

Mr. Mueller. That is what the report says. Yeah, the report.

Mr. Richmond. But, in fact, it is completely appropriate for the President's staff, especially his counsels, to take notes during a meeting, correct?

Mr. Mueller. I rely on the wording of the report.

Mr. Richmond. Well, thank you, Director Mueller, for your investigation into whether the President attempted to obstruct justice by ordering his White House counsel, Don McGahn, to lie to protect the President and then to create a false record about it. It is clear that any other person who engaged in such conduct would be charged with a crime. We will continue our investigation, and we will hold the President accountable because no one is above the law.

Chairman Nadler. The time of the gentleman has expired.

The gentleman from Florida.

Mr. Gaetz. Director Mueller, can you state with confidence that the Steele dossier was not part of Russia's disinformation

campaign?

Mr. Mueller. As I said in my opening statement, that part of the building of the case predated me and by at least 10 months.

Mr. Gaetz. Paul Manafort's alleged crimes regarding tax evasion predated you. You had no problem charging them. As a matter of fact, this Steele dossier predated the Attorney General, and he didn't have any problem answering the question. When Senator Cornyn asked the Attorney General the exact question I asked you, Director, the Attorney General said, and I am quoting: No, I can't state that with confidence. And that is one of the areas I am reviewing. I am concerned about it, and I don't think it is entirely speculative.

Now, if something is not entirely speculative, then it must have some factual basis, but you identify no factual basis regarding the dossier or the possibility that it was part of the Russia disinformation campaign.

Now, Christopher Steele's reporting is referenced in your report. Steele reported to the FBI that senior Russian Foreign Ministry figures, along with other Russians, told him that there was -- and I am quoting from the Steele dossier -- extensive evidence of conspiracy between the Trump campaign team and the Kremlin.

So here is my question: Did Russians really tell that to Christopher Steele, or did he just make it all up, and was he lying to the FBI?

Mr. Mueller. Let me back up a second, if I could, and say, as I said earlier with regard to Steele, that that is beyond my purview.

Mr. Gaetz. No, it is exactly your purview, Director Mueller, and here is why: Only one of two things is possible, right? Either Steele made this whole thing up and there were never any Russians telling him of this vast criminal conspiracy that you didn't find, or Russians lied to Steele. Now, if Russians were lying to Steele to undermine our confidence in our duly elected President, that would seem to be precisely your purview because you stated in your opening that the organizing principle was to fully and thoroughly investigate Russia's interference. But you weren't interested in whether or not the Russians were interfering through Christopher Steele. And if Steele was lying, then you should have charged him with lying, like you charged a variety of other people. But you say nothing about this in your report.

Mr. Mueller. Well, sir --

Mr. Gaetz. Meanwhile, Director, you are quite loquacious on other topics. You write 3,500 words about the June 9 meeting between the Trump campaign and Russian lawyer Veselnitskaya. You write on page 103 of your report that the President's legal team suggested -- and I am quoting from your report -- that the meeting might have been a setup by individuals working with the firm that produced the Steele reporting.

So I am going to ask you a very easy question, Director



Mueller. On the week of June 9, who did Russian lawyer Veselnitskaya meet with more frequently, the Trump campaign or Glenn Simpson, who was functionally acting as an operative for the Democratic National Committee?

Mr. Mueller. Well, what I think is missing here is the fact that this is under investigation elsewhere in the Justice Department --

Mr. Gaetz. I --

Mr. Mueller. -- and if I can finish, sir, and if I can finish, sir -- and consequently, it is not within my purview. The Department of Justice and FBI should be responsive to questions on this particular issue.

Mr. Gaetz. It is absurd to suggest that an operative for the Democrats was meeting with this Russian lawyer the day before and the day after the Trump Tower meeting, and yet that is not something you reference.

Now, Glenn Simpson testified under oath he had dinner with Veselnitskaya the day before and the day after this meeting with the Trump team. Do you have any basis, as you sit here today, to believe that Steele was lying?

Mr. Mueller. As I said before and I will say again, it is not my purview. Others are investigating what you address.

Mr. Gaetz. So it is not your purview to look into whether or not Steele is lying. It is not your purview to look into whether or not anti-Trump Russians are lying to Steele. And it is not

your purview to look at whether or not Glenn Simpson was meeting with the Russians the day before and the day after you write 3,500 words about the Trump campaign meeting.

So I am wondering how these decisions are guided. I look at the inspector general's report. I am citing from page 404 of the inspector general's report. It states: Page stated: Trump's not ever going to be President, right? Right. Strzok replied: No, he is not. We will stop it.

Also in the inspector general's report, there is someone identified as attorney No. 2. Attorney No. 2 -- this is page 419 -- replied, "Hell no," and then added, "Viva la resistance."

Attorney No. 2 in the inspector general's report and Strzok both worked on your team, didn't they?

Mr. Mueller. Pardon me, can you --

Mr. Gaetz. They both worked on your team, didn't they?

Mr. Mueller. I know -- I heard Strzok. Who else were you talking about?

Mr. Gaetz. Attorney No. 2 identified in the inspector general's report.

Mr. Mueller. And the question was?

Mr. Gaetz. Did he work for you? The guy who said, "Viva la resistance."

Mr. Mueller. Peter Strzok worked for me for a period of time, yes.

Mr. Gaetz. Yeah, but so did the other guy that said, "Viva

la resistance." And here is what I am kind of noticing, Director Mueller: When people associated with Trump lied, you throw the book at them. When Christopher Steele lied, nothing. And so it seems to be that when Glenn Simpson met with Russians, nothing. When the Trump campaign met with Russians, 3,500 words. And maybe the reason why there are these discrepancies in what you focused on is because the team was so biased --

Chairman Nadler. The time of the --

Mr. Gaetz. -- pledged to the resistance, pledged to stop Trump.

Chairman Nadler. The time of the gentleman has expired.

Mr. Jeffries of New York is recognized.

Mr. Jeffries. Mr. Mueller, obstruction of justice is a serious crime that strikes at the core of an investigator's effort to find the truth, correct?

Mr. Mueller. Correct.

Mr. Jeffries. The crime of obstruction of justice has three elements, true?

Mr. Mueller. True.

Mr. Jeffries. The first element is an obstructive act, correct?

Mr. Mueller. Correct.

Mr. Jeffries. An obstructive act could include taking an action that would delay or interfere with an ongoing investigation, as set forth in Volume II, page 87 and 88 of your

report, true?

Mr. Mueller. I am sorry. Could you again repeat the question?

Mr. Jeffries. An obstructive act could include taking an action that would delay or interfere with an ongoing investigation.

Mr. Mueller. That is true.

Mr. Jeffries. Your investigation found evidence that President Trump took steps to terminate the special counsel, correct?

Mr. Mueller. Correct.

Mr. Jeffries. Mr. Mueller, does ordering the termination of the head of a criminal investigation constitute an obstructive act?

Mr. Mueller. That would be -- I would refer you to the report on that.

Mr. Jeffries. Let me refer you to page 87 and 88 of Volume II, where you conclude: The attempt to remove the special counsel would qualify as an obstructive act if it would naturally obstruct the investigation and any grand jury proceedings that might flow from the inquiry, correct?

Mr. Mueller. Yes. I have got that now. Thank you.

Mr. Jeffries. Thank you. The second element of obstruction of justice is the presence of an obstructive act in connection with an official proceeding, true?

Mr. Mueller. True.

Mr. Jeffries. Does the special counsel's criminal investigation into the potential wrongdoing of Donald Trump constitute an official proceeding?

Mr. Mueller. And that is an area which I cannot get into.

Mr. Jeffries. Okay. President Trump tweeted on June 16, 2017, quote: I am being investigated for firing the FBI Director by the man who told me to fire the FBI Director. Witch hunt.

The June 16th tweet just read -- was cited on page 89 in Volume II -- constitutes a public acknowledgement by President Trump that he was under criminal investigation, correct?

Mr. Mueller. I think generally correct.

Mr. Jeffries. One day later, on Saturday, June 17th, President Trump called White House Counsel Don McGahn at home and directed him to fire the special counsel, true?

Mr. Mueller. I believe it to be true. I think we have been -- I may have stated in response to questions some --

Mr. Jeffries. That is correct. President Trump told Don McGahn, quote, Mueller has to go, close quote. Correct?

Mr. Mueller. Correct.

Mr. Jeffries. Your report found, on page 89, Volume II, that substantial evidence indicates that, by June 17th, the President knew his conduct was under investigation by a Federal prosecutor who could present any evidence of Federal crimes to a grand jury, true?

Mr. Mueller. True.

Mr. Jeffries. The third element -- the second element having just been satisfied, the third element of the crime of obstruction of justice is corrupt intent, true?

Mr. Mueller. True.

Mr. Jeffries. Corrupt intent exists if the President acted to obstruct an official proceeding for the improper purpose of protecting his own interests, correct?

Mr. Mueller. That is generally correct.

Mr. Jeffries. Thank you.

Mr. Mueller. The only thing I would say is we're going through the three elements of the proof of the obstruction of justice charges when the fact of the matter is we got -- excuse me, just one second.

Mr. Jeffries. Thank you. Mr. Mueller, let me move on in the interest of time. Upon learning about the appointment of the special counsel, your investigation found that Donald Trump stated to the then Attorney General, quote: Oh my God, this is terrible. This is the end of my Presidency. I am F'd.

Is that correct?

Mr. Mueller. Correct.

Mr. Jeffries. Is it fair to say that Donald Trump viewed the special counsel's investigation into his conduct as adverse to his own interests?

Mr. Mueller. I think that generally is true.

Mr. Jeffries. The investigation found evidence, quote, that the President knew that he should not have directed Don McGahn to fire the special counsel. Correct?

Mr. Mueller. And where do you have that quote?

Mr. Jeffries. Page 90, Volume II: There is evidence that the President knew he should not have made those calls to McGahn, close quote.

Mr. Mueller. I see that. Yes, that is accurate.

Mr. Jeffries. The investigation also found substantial evidence that President Trump repeatedly urged McGahn to dispute that he was ordered to have the special counsel terminated, correct?

Mr. Mueller. Correct.

Mr. Jeffries. The investigation found substantial evidence that, when the President ordered Don McGahn to fire the special counsel and then lie about it, Donald Trump, one, committed an obstructive act; two, connected to an official proceeding; three, did so with corrupt intent.

Those are the elements of obstruction of justice. This is the United States of America. No one is above the law, no one. The President must be held accountable one way or the other.

Mr. Mueller. Let me just say, if I might, I don't subscribe necessarily to your -- the way you analyze that. I am not saying it is out of the ballpark, but I am not supportive of that analytical charge.

Mr. Jeffries. Thank you.

Chairman Nadler. The gentleman from Colorado.

Mr. Buck. Thank you, Mr. Chairman.

Mr. Mueller, over here.

Mr. Mueller. Hi.

Mr. Buck. Hi. I want to start by thanking you for your service. You joined the Marines and led a rifle platoon in Vietnam, where you earned a bronze star, purple heart, and other commendations. You served as an assistant United States attorney leading the homicide unit here in D.C., U.S. attorney for the District of Massachusetts and later Northern District of California, Assistant Attorney General for DOJ's Criminal Division, and the FBI Director. So thank you, I appreciate that.

But having reviewed your biography, it puzzles me why you handled your duties in this case the way you did. The report contradicts what you taught young attorneys at the Department of Justice, including to ensure that every defendant is treated fairly, or, as Justice Sutherland said in the Berger case, a prosecutor is not the representative of an ordinary party to a controversy but of a sovereignty whose interest in a criminal prosecution is not that it shall win a case but that justice shall be done and that the prosecutor may strike hard blows, but he is not at liberty to strike foul ones.

By listing the 10 factual situations and not reaching a conclusion about the merits of the case, you unfairly shifted the



burden of proof to the President, forcing him to prove his innocence while denying him a legal forum to do so. And I have never heard of a prosecutor declining a case and then holding a press conference to talk about the defendant. You noted eight times in your report that you had a legal duty under the regulations to either prosecute or decline charges. Despite this, you disregarded that duty.

As a former prosecutor, I am also troubled with your legal analysis. You discussed 10 separate factual patterns involving alleged obstruction, and then you failed to separately apply the elements of the applicable statutes.

I looked at the 10 factual situations, and I read the case law. And I have to tell you, just looking at the Flynn matter, for example, the four statutes that you cited for possible obstruction, 1503, 1505, 1512(b)(3), and 1512(c)(2), when I look at those concerning the Flynn matter, 1503 is inapplicable because there wasn't a grand jury or trial jury impaneled, and Director Comey was not an officer of the court as defined by the statute.

Section 1505 criminalizes acts that would obstruct or impede administrative proceedings as those before Congress or an administrative agency. The Department of Justice criminal resource manual states that the FBI investigation is not a pending proceeding.

1512(b)(3) talks about intimidation, threats of force to tamper with a witness. General Flynn at the time was not a

witness, and certainly Director Comey was not a witness.

And 1512(c)(2) talks about tampering with a record. And as Joe Biden described the statute as it was being debated on the Senate floor, he called this a statute criminalizing document shredding, and there is nothing in your report that alleges that the President destroyed any evidence.

So what I have to ask you and what I think people are working around in this hearing is -- let me lay a little foundation for it. The ethical rules require that a prosecutor have a reasonable probability of conviction to bring a charge. Is that correct?

Mr. Mueller. It sounds generally accurate.

Mr. Buck. And the regulations concerning your job as special counsel state that your job is to provide the Attorney General with a confidential report explaining the prosecution or declination decisions reached by your office.

You recommended declining prosecution of President Trump and anyone associated with his campaign because there was insufficient evidence to convict for a charge of conspiracy with Russian interference in the 2016 election. Is that fair?

Mr. Mueller. That is fair.

Mr. Buck. Was there sufficient evidence to convict President Trump or anyone else with obstruction of justice?

Mr. Mueller. We did not make that calculation.

Mr. Buck. How could you not have made the calculation with the regulation --

Mr. Mueller. As the OLC opinion, the OLC opinion, Office of Legal Counsel, indicates that we cannot indict a sitting President. So one of the tools that a prosecutor would use is not there.

Mr. Buck. Okay. But let me just stop. You made the decision on the Russian interference. You couldn't have indicted the President on that, and you made the decision on that, but when it came to obstruction, you threw a bunch of stuff up against the wall to see what would stick, and that is really unfair.

Mr. Mueller. I would not agree to that characterization at all. What we did is provide to the Attorney General, in the form of a confidential memorandum, our understanding of the case, those cases that were brought, those cases that were declined, and that one case where the President cannot be charged with a crime.

Mr. Buck. Okay. Could you charge the President with a crime after he left office?

Mr. Mueller. Yes.

Mr. Buck. You believe that he committed -- you could charge the President of the United States with obstruction of justice after he left office?

Mr. Mueller. Yes.

Mr. Buck. Ethically, under the ethical standards?

Mr. Mueller. Well, I am not certain because I haven't looked at the ethical standards, but the OLC opinion says that the prosecutor, while he cannot bring a charge against a sitting

President, nonetheless, he can continue the investigation to see if there are any other persons who might be drawn into the conspiracy.

Chairman Nadler. The time of the gentleman has expired.  
The gentleman from Rhode Island.

Mr. Cicilline. Director, as you know, we are specifically focusing on five separate obstruction episodes here today. I would like to ask you about the third episode. It is the section of your report entitled "The President's efforts to curtail the special counsel investigation," beginning at page 90. And by "curtail," you mean limit, correct?

Mr. Mueller. Correct.

Mr. Cicilline. My colleagues have walked through how the President tried to have you fired through the White House counsel, and because Mr. McGahn refused the order, the President asked others to help limit your investigation. Is that correct?

Mr. Mueller. Correct.

Mr. Cicilline. And was Corey Lewandowski one such individual?

Mr. Mueller. Again, can you remind me what --

Mr. Cicilline. Well, Corey Lewandowski is the President's former campaign manager, correct?

Mr. Mueller. Correct.

Mr. Cicilline. Did he have any official position with the Trump administration?

Mr. Mueller. I don't believe so.

Mr. Cicilline. Your report describes an incident in the Oval Office involving Mr. Lewandowski on June 19, 2017, at Volume II, page 91. Is that correct.

Mr. Mueller. I am sorry. What is the citation, sir?

Mr. Cicilline. Page 91.

Mr. Mueller. Of the second volume?

Mr. Cicilline. Yes.

Mr. Mueller. And where?

Mr. Cicilline. A meeting in the Oval Office between Mr. Lewandowski and the President.

Mr. Mueller. Okay.

Mr. Cicilline. And that was just 2 days after the President called Don McGahn at home and ordered him to fire you. Is that correct?

Mr. Mueller. Apparently so.

Mr. Cicilline. So, right after his White House counsel, Mr. McGahn, refused to follow the President's order to fire you, the President came up with a new plan, and that was to go around to all of his senior advisers and government aides to have a private citizen try to limit your investigation.

What did the President tell Mr. Lewandowski to do? Do you recall he told him -- he dictated a message to Mr. Lewandowski for Attorney General Sessions and asked him to write it down. Is that correct?

Mr. Mueller. True.

Mr. Cicilline. And did you and your team see this handwritten message?

Mr. Mueller. I am not going to get into what we may or may not have included in our investigation.

Mr. Cicilline. Okay. The message directed Sessions to give -- and I am quoting from your report -- to give a public speech saying that he planned to meet with the special prosecutor to explain this is very unfair and let the special prosecutor move forward with investigating election meddling for future elections. That is at page 91. Is that correct?

Mr. Mueller. Yes, I see that. Thank you. Yes, it is.

Mr. Cicilline. In other words, Mr. Lewandowski, a private citizen, was instructed by the President of the United States to deliver a message from the President to the Attorney General that directed him to limit your investigation, correct?

Mr. Mueller. Correct.

Mr. Cicilline. And at this time, Mr. Sessions was still recused from oversight of your investigation, correct?

Mr. Mueller. I am sorry. Could you restate that?

Mr. Cicilline. The Attorney General was recused from oversight.

Mr. Mueller. Yes, yes.

Mr. Cicilline. So the Attorney General would have had to violate his own Department's rules in order to comply with the

President's order, correct?

Mr. Mueller. Well, I am not going to get into the subsidiary details. I just refer you again to page 91, 92 of the report.

Mr. Cicilline. And if the Attorney General had followed through with the President's request, Mr. Mueller, it would have effectively ended your investigation into the President and his campaign, as you note on page 97, correct?

Mr. Mueller. Could you --

Mr. Cicilline. At page 97, you write, and I quote: Taken together, the President's directives indicate that Sessions was being instructed to tell the special counsel to end the existing investigation into the President and his campaign, with the special counsel being permitted to move forward with investigating election meddling for future elections. Is that correct?

Mr. Mueller. Generally true, yes, sir.

Mr. Cicilline. And an unsuccessful attempt to obstruct justice is still a crime. Is that correct?

Mr. Mueller. That is correct.

Mr. Cicilline. And Mr. Lewandowski tried to meet with the Attorney General. Is that right?

Mr. Mueller. True.

Mr. Cicilline. And he tried to meet with him in his office so he would be certain there wasn't a public log of the visit.

Mr. Mueller. According to what we gathered for the report.

Mr. Cicilline. And the meeting never happened and the

President raised the issue again with Mr. Lewandowski. And this time, he said, and I quote, if Sessions does not meet with you, Lewandowski should tell Sessions he was fired, correct?

Mr. Mueller. Correct.

Mr. Cicilline. So immediately following the meeting with the President, Lewandowski then asked Mr. Dearborn to deliver the message, who is the former chief of staff to Mr. Sessions. And Mr. Dearborn refuses to deliver it because he doesn't feel comfortable. Isn't that correct?

Mr. Mueller. Generally correct, yes.

Mr. Cicilline. So, just so we are clear, Mr. Mueller, 2 days after the White House Counsel Don McGahn refused to carry out the President's order to fire you, the President directed a private citizen to tell the Attorney General of the United States, who was recused at the time, to limit your investigation to future elections, effectively ending your investigation into the 2016 Trump campaign. Is that correct?

Mr. Mueller. I am not going to adopt your characterization. I will say that the facts as laid out in the report are accurate.

Mr. Cicilline. Well, Mr. Mueller, in your report you, in fact, write at page 99 -- 97: Substantial evidence indicates that the President's effort to have Sessions limit the scope of the special counsel's investigation to future election interference was intended to prevent further investigative scrutiny of the President and his campaign conduct. Is that correct?



Mr. Mueller. Generally.

Mr. Cicilline. And so, Mr. Mueller, you have seen a letter where a thousand former Republican and Democratic Federal prosecutors have read your report and said, anyone but the President who committed those acts would be charged with obstruction of justice. Do you agree with those former colleagues, a thousand prosecutors who came to that conclusion?

Chairman Nadler. The time of the gentleman has expired.  
The gentleman from Arizona.

Mr. Biggs. Thank you, Mr. Chairman.

Mr. Mueller, you guys, your team wrote in the report, quote -- this is at the top of page 2, Volume I, also on page 173, by the way. You said that you had come to the conclusion that, quote: The investigation did not establish that members of the Trump campaign conspired or coordinated with the Russian Government in its election interference activities, close quote.

That is an accurate statement, right?

Mr. Mueller. That is accurate.

Mr. Biggs. And I am curious, when did you personally come to that conclusion?

Mr. Mueller. Can you remind me which paragraph you are referring to?

Mr. Biggs. Top of page 2.

Mr. Mueller. On two.

Mr. Biggs. Volume I.

Mr. Mueller. Okay. And exactly which paragraph are you looking at on 2?

Mr. Biggs. The investigation did not establish --

Mr. Mueller. Of course. I see it, yes. What was your question?

Mr. Biggs. My question now is, when did you personally reach that conclusion?

Mr. Mueller. Well, we were ongoing for 2 years.

Mr. Biggs. Right, you were ongoing, and you wrote it at some point during that 2-year period, but at some point, you had to come to a conclusion that I don't think there -- that there is not a conspiracy going on here. There was no conspiracy between this President. I am not talking about the rest of the President's team. I am talking about this President and the Russians.

Mr. Mueller. As you understand, in developing a criminal case, you get pieces of information, pieces of information, witnesses, and the like as you make your case.

Mr. Biggs. Right.

Mr. Mueller. And when you make a decision on a particular case depends on a number of factors.

Mr. Biggs. Right, I understand.

Mr. Mueller. So I cannot say specifically that we reached a decision on a particular defendant at a particular point in time.

RPTR MERTENS

EDTR ZAMORA

[10:44 a.m.]

Mr. Biggs. But it was sometime well before you wrote the report. Fair enough? I mean, you wrote the report dealing with a whole myriad of issues. Certainly, at some time prior to that report is when you reached the decision that, okay, with regard to the President himself, I don't find anything here. Fair enough?

Mr. Mueller. Well, I'm not certain I do agree with that.

Mr. Biggs. So you waited till the last minute when you were actually writing the report and say, oh, okay --

Mr. Mueller. No. But there were various aspects of the development and --

Mr. Biggs. Sure. And that's my point. There are various aspects that happen, but somewhere along the pike, you come to a conclusion there's nothing -- there's no there there for this defendant. Isn't that right?

Mr. Mueller. I can't -- I can't speak to that.

Mr. Biggs. You can't say when. Fair enough.

Mr. Zebley. Mr. Biggs --

Mr. Biggs. So -- no, I'm not -- no. I'm asking the sworn witness.

Mr. Mueller, the evidence suggests that on May 10, 2017, at approximately 7:45 a.m., 6 days before the DAG, the Deputy

Attorney General, appointed you special counsel, Mr. Rosenstein called you and mentioned the appointment of the special counsel. Not necessarily that you'd be appointed, but that you had a discussion to that. Is that true? May 10, 2017.

Mr. Mueller. I don't have any -- no, I don't have any knowledge of that occurring.

Mr. Biggs. You don't have any knowledge or you don't recall?

Mr. Mueller. I don't have any knowledge.

Mr. Biggs. The evidence also suggests --

Mr. Mueller. Given that what I saw you do, are you questioning that?

Mr. Biggs. Well, I just find it intriguing. Let me just tell you that there's evidence that suggests that that phone call took place and that that is what was said.

So let's move to the next question. The evidence suggests that also on May 12, 2017, 5 days before the DAG appointed you special counsel, you met with Mr. Rosenstein in person. Did you discuss the appointment of the special counsel then, not necessarily you, but that there would be a special counsel?

Mr. Mueller. I've gone into waters that don't allow me to give you an answer to that particular question. It relates to the internal discussions he would have in terms of indicting an individual.

Mr. Biggs. This has nothing to do with the indictment. It has to do with special counsel and whether you discussed that with

Mr. Rosenstein.

The evidence also suggests that on May 13, 4 days before you were appointed special counsel, you met with attorney -- former Attorney General Sessions and Rosenstein, and you spoke about special counsel. Do you remember that?

Mr. Mueller. Not offhand, no.

Mr. Biggs. Okay. And on May 16, the day before you were appointed special counsel, you met with the President and Rod Rosenstein. Do you remember having that meeting?

Mr. Mueller. Yes.

Mr. Biggs. And discussion of the position of FBI Director took place. Do you remember that?

Mr. Mueller. Yes.

Mr. Biggs. And did you discuss at any time in that meeting Mr. Comey's termination?

Mr. Mueller. No.

Mr. Biggs. Did you discuss at any time in that meeting the potential appointment of a special counsel, not necessarily you, but just in general terms?

Mr. Mueller. I can't get into the discussions on that.

Mr. Biggs. How many times did you speak to Mr. Rosenstein before May 17, which is the day you got appointed, regarding the appointment of special counsel? How many times prior to that did you discuss that?

Mr. Mueller. I can't tell you how many times.

Mr. Biggs. Is that because you don't recall or you just --

Mr. Mueller. I do not recall.

Mr. Biggs. Okay. Thank you.

How many times did you speak with Mr. Comey about any investigations pertaining to Russia prior to May 17, 2017? Did you have any?

Mr. Mueller. None at all.

Mr. Biggs. Zero.

Mr. Mueller. Zero.

Mr. Biggs. Okay. My time has expired, so --

Chairman Nadler. The time of the gentleman has expired.

The gentleman from California.

Mr. Swalwell. Director Mueller, going back to the President's obstruction via Corey Lewandowski, it was referenced that a thousand former prosecutors who served under Republican and Democratic administrations with 12,000 years of Federal service wrote a letter regarding the President's conduct. Are you familiar with that letter?

Mr. Mueller. I've read about that letter, yes.

Mr. Swalwell. And some of the individuals who signed that letter, the statement of former prosecutors, are people you worked with. Is that right?

Mr. Mueller. Quite probably, yes.

Mr. Swalwell. People that you respect?

Mr. Mueller. Quite probably, yes.

Mr. Swalwell. And in that letter, they said all of this conduct trying to control and impede the investigation against the President by leveraging his authority over others is similar to conduct we have seen charged against other public officials and people in powerful positions.

Are they wrong?

Mr. Mueller. They had a different case.

Mr. Swalwell. Do you want to sign that letter, Director Mueller?

Mr. Mueller. They had a different case.

Mr. Swalwell. Director Mueller, thank you for your service going all the way back to the sixties when you courageously served in Vietnam. Because I have a seat on the Intelligence Committee, I will have questions later. And because of our limited time, I will ask to enter this letter into the record under unanimous consent.

Chairman Nadler. Without objection.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Mr. Swalwell. And I yield to my colleague from California, Mr. Lieu.

Mr. Lieu. Thank you, Director Mueller, for your long history of service to our country, including your service as a Marine where you earned a Bronze Star with a V device.

I'd like to now turn to the elements of obstruction of justice as applied to the President's attempts to curtail your investigation.

The first element of obstruction of justice requires an obstructive act, correct?

Mr. Mueller. Correct.

Mr. Lieu. Okay. I'd like to direct you to page 97 of Volume II of your report. And you wrote there on page 97, quote, Sessions was being instructed to tell the special counsel to end the existing investigation into the President and his campaign, unquote. That's in the report, correct?

Mr. Mueller. Correct.

Mr. Lieu. That would be evidence of an obstructive act because it would naturally obstruct the investigation, correct?

Mr. Mueller. Correct.

Mr. Lieu. Okay. Let's turn now to the second element of the crime of obstruction of justice which requires a nexus to an official proceeding. Again, I'm going to direct you to page 97, the same page in Volume II, and you wrote, quote, by the time the President's initial one-on-one meeting with Lewandowski on June



19, 2017, the existence of a grand jury investigation supervised by the special counsel was public knowledge.

That's in the report, correct?

Mr. Mueller. Correct.

Mr. Lieu. That would constitute evidence of a nexus to an official proceeding because a grand jury investigation is an official proceeding, correct?

Mr. Mueller. Yes.

Mr. Lieu. Okay. I'd like to now turn to the final element of the crime of obstruction of justice. On that same page, page 97, do you see where there is an intent section on that page?

Mr. Mueller. I do see that.

Mr. Lieu. All right. Would you be willing to read the first sentence?

Mr. Mueller. And that was starting with?

Mr. Lieu. Substantial evidence.

Mr. Mueller. Indicates that the President's?

Mr. Lieu. If you could read that first sentence. Would you be willing to do that?

Mr. Mueller. I'm happy to have you read it.

Mr. Lieu. Okay. I will read it then.

You wrote, quote, substantial evidence indicates that the President's effort to have Sessions limit the scope of the special counsel's investigation to future election interference was intended to prevent further investigative scrutiny of the

President's and his campaign's conduct, unquote.

That's in the report, correct?

Mr. Mueller. That is in the report. And I rely what's in the report to indicate what's happening in the paragraphs that we've been discussing.

Mr. Lieu. Thank you.

So to recap what we've heard, we have heard today that the President ordered former White House Counsel Don McGahn to fire you. The President ordered Don McGahn to then cover that up and create a false paper trail. And now we've heard the President ordered Corey Lewandowski to tell Jeff Sessions to limit your investigation so that he, you, stop investigating the President.

I believe a reasonable person looking at these facts could conclude that all three elements of the crime of obstruction of justice have been met. And I would like to ask you, the reason, again, that you did not indict Donald Trump is because of OLC opinion stating that you cannot indict a sitting President, correct?

Mr. Mueller. That is correct.

Mr. Lieu. The fact that the orders by the President were not carried out, that is not a defense to obstruction of justice because the statute itself is quite broad. It says that as long as you endeavor or attempt to obstruct justice, that would also constitute a crime.

Mr. Mueller. I'm not going to get into that at this

junction.

Mr. Lieu. Okay. Thank you.

And based on the evidence that we have heard today, I believe a reasonable person could conclude that at least three crimes of obstruction of justice by the President occurred. We're going to hear about two additional crimes, and that will be the witness tamperings of Michael Cohen and Paul Manafort.

I yield back.

Mr. Mueller. The only thing I want to add is that on going through the elements with you do not mean -- or does not mean that I subscribe to what you're trying to prove through those elements.

Chairman Nadler. The time of the gentleman has expired.

The gentlelady from Arizona.

I'm sorry. The gentleman from California.

Mr. McClintock. Thank you, Mr. Chairman.

Mr. Mueller, over here. Thanks for joining us today. You had three discussions with Rod Rosenstein about your appointment as special counsel: May 10, May 12, and May 13, correct?

Mr. Mueller. If you say so. I have no reason to dispute that.

Mr. McClintock. Then you met with the President on the 16th with Rod Rosenstein present. And then on the 17th, you were formally appointed as special counsel. Were you meeting with the President on the 16th with knowledge that you were under consideration for appointment to special counsel?

Mr. Mueller. I did not believe I was under consideration for counsel. I had served two terms as FBI Director --

Mr. McClintock. The answer is no.

Mr. Mueller. The answer is no.

Mr. McClintock. Greg Jarrett describes your office as the team of partisans. And as additional information is coming to light, there's a growing concern that political bias caused important facts to be omitted from your report in order to cast the President unfairly in a negative light. For example, John Dowd, the President's lawyer, leaves an message with Michael Flynn's lawyer on November 17 of -- November of 2017. The edited version in your report makes it appear that he was improperly asking for confidential information, and that's all we know from your report, except that the judge in the Flynn case ordered the entire transcript released in which Dowd makes it crystal clear that's not what he was suggesting.

So my question is, why did you edit the transcript to hide the exculpatory part of the message?

Mr. Mueller. Well, I'm not sure I would agree with your characterization that we did anything to hide.

Mr. McClintock. Well, you omitted it. You quoted the part where he says we need some kind of heads-up just for the sake of protecting all of our interests, if we can, but you omitted the portion where he says without giving up any confidential information.

Mr. Mueller. Well, I'm not going to go further in terms of discussing the --

Mr. McClintock. Let's go on. You extensively discussed Konstantin Kilimnik's activities with Paul Manafort. And you describe him as, quote, a Russian-Ukrainian political consultant and long-time employee of Paul Manafort assessed by the FBI to have ties to Russian intelligence. And, again, that's all we know from your report, except we've since learned from news articles that Kilimnik was actually a U.S. State Department intelligence source, yet nowhere in your report is he so identified. Why was that fact omitted?

Mr. Mueller. I don't necessarily credit what you're saying occurred.

Mr. McClintock. Were you aware that Kilimnik was a U.S. State Department source?

Mr. Mueller. I'm not going to go into the ins and outs -- I'm not going to go into the ins and outs of what we had in the course of our investigation.

Mr. McClintock. Did you interview Konstantin Kilimnik?

Mr. Mueller. Pardon?

Mr. McClintock. Did you interview Konstantin Kilimnik?

Mr. Mueller. I can't go into the discussion of our investigative moves.

Mr. McClintock. And yet that is the basis of your report. Again, the problem we're having is we have to rely on your report

for an accurate reflection of the evidence, and we're starting to find out that's not true.

For example, your report famously links Russian internet troll farms with the Russian Government. Yet at a hearing on May 28 in the Concord Management IRA prosecution that you initiated, the judge excoriated both you and Mr. Barr for producing no evidence to support this claim. Why did you suggest Russia was responsible for the troll farms, when in court you've been unable to produce any evidence to support it?

Mr. Mueller. Well, I'm not going to get into that any further than I already have.

Mr. McClintock. But you have left the clear impression throughout the country through your report that it was the Russian Government behind the troll farms, and yet when you're called upon to provide actual evidence in court, you fail to do so.

Mr. Mueller. Well, again, I dispute your characterization of what occurred in that proceeding.

Mr. McClintock. In fact, the judge considered holding the prosecutors in criminal contempt. She backed off only after your hastily called press conference the next day in which you retroactively made the distinction between the Russian Government and the Russia troll farms. Did your press conference of May 29 have anything to do with the threat to hold your prosecutors in contempt the previous day for publicly misrepresenting the evidence?

Mr. Mueller. What was the question?

Mr. McClintock. The question is, did your May 29 press conference have anything to do with the fact that the previous day, the judge threatened to hold your prosecutors in contempt for misrepresenting evidence?

Mr. Mueller. No.

Mr. McClintock. Now, the fundamental problem is, as I said, we've got to take your word. Your team faithfully, accurately, impartially, and completely described all of the underlying evidence in the Mueller report, and we're finding more and more instances where this just isn't the case. And it's starting to look like, you know, having desperately tried and failed to make a legal case against the President, you made a political case instead. You put it in a paper sack, lit it on fire, dropped it on our porch, rang the doorbell and ran.

Mr. Mueller. I don't think you reviewed a report that is as thorough, as fair, as consistent as the report that we have in front of us.

Mr. McClintock. Then why is contradictory information --

Chairman Nadler. The time of the gentleman has expired.

The gentleman from Maryland is recognized.

Mr. Raskin. Director Mueller, let's go to a fourth episode of obstruction of justice in the form of witness tampering, which is urging witnesses not to cooperate with law enforcement, either by persuading them or intimidating them. Witness tampering is a

felony punishable by 20 years in prison. You found evidence that the President engaged in efforts, and I quote, to encourage witnesses not to cooperate with the investigation. Is that right?

Mr. Mueller. That's correct. Have you got a citation?

Mr. Raskin. I'm at page 7 on Volume II.

Mr. Mueller. Thank you.

Mr. Raskin. Now, one of these witnesses was Michael Cohen, the President's personal lawyer, who ultimately pled guilty to campaign violations based on secret hush money payments to women the President knew and also to lying to Congress about the hope for a \$1 billion Trump Tower deal.

After the FBI searched Cohen's home, the President called him up personally, he said, to check in, and told him to, quote, hang in there and stay strong. Is that right? Do you remember finding that?

Mr. Mueller. If it's in the report as stated, yes, it is right.

Mr. Raskin. Yes. Also in the report, actually, are a series of calls made by other friends of the President. One reached out to say he was with the boss at Mar-a-Lago, and the President said he loves you. His name is redacted. Another redacted friend called to say, the boss loves you. And the third redacted friend called to say, everyone knows the boss has your back.

Do you remember finding that sequence of calls?

Mr. Mueller. Generally, yes.



Mr. Raskin. When the news -- and, in fact, Cohen said that following the receipt of these messages -- I'm quoting here, page 147, Volume II -- he believed he had the support of the White House if he continued to toe the party line, and he determined to stay on message and be part of the team. That's at page 147. Do you remember generally finding that?

Mr. Mueller. Generally, yes.

Mr. Raskin. Well, and Robert Costello, a lawyer close to the President's legal team, emailed Cohen to say, quote, you are loved, they're in our corner, sleep well tonight, and you have friends in high places. And that's up on the screen, page 147. Do you remember reporting that?

Mr. Mueller. I see that.

Mr. Raskin. Okay. Now, when the news first broke that Cohen had arranged payoffs to Stormy Daniels, Cohen faithfully stuck to this party line. He said publicly that neither the Trump Organization nor the Trump campaign was a part of the transaction and neither reimbursed him. Trump's personal attorney at that point quickly texted Cohen to say, quote, client says thank you for what you do.

Mr. Mueller, who is the capital C client thanking Cohen for what he does?

Mr. Mueller. I can't speak to that.

Mr. Raskin. Okay. The assumption in the context suggests very strongly it's President Trump.

Mr. Mueller. I can't speak to that.

Mr. Raskin. Okay. Cohen later broke and pled guilty to campaign finance offenses, and admitted fully they were made, quote, at the direction of candidate Trump. Do you remember that?

Mr. Mueller. Yes.

Mr. Raskin. After Cohen's guilty plea, the President suddenly changed his tune towards Mr. Cohen, didn't he?

Mr. Mueller. I would say I rely on what's in the report.

Mr. Raskin. Well, he made the suggestion that Cohen family members had committed crimes. He targeted, for example, Cohen's father-in-law and repeatedly suggested that he was guilty of committing crimes, right?

Mr. Mueller. Generally accurate.

Mr. Raskin. Okay. On page 154, you give a powerful summary of these changing dynamics, and you said -- I'm happy to have you read it, but I'm happy to do it if not.

Mr. Mueller. I have it in front of me. Thank you.

Mr. Raskin. Would you like to read it?

Mr. Mueller. I would.

Mr. Raskin. Can you read it out loud to everybody?

Mr. Mueller. I would be happy to have you read it out loud.

Mr. Raskin. Okay. Very good. We'll read it at the same time.

The evidence concerning this sequence of events could support an inference that the President used inducements in the form of

positive messages in an effort to get Cohen not to cooperate and then turned to attacks and intimidation to deter the provision of information or to undermine Cohen's credibility once Cohen began cooperating.

Mr. Mueller. I believe that's accurate.

Mr. Raskin. Okay. And in my view, if anyone else in America engaged in these actions, they would have been charged with witness tampering. We must enforce the principle in Congress that you emphasize so well in the very last sentence of your report, which is that in America, no person is so high as to be above the law.

I yield back, Mr. Chairman.

Chairman Nadler. The gentleman leads back.

The gentlelady from Arizona.

Mrs. Lesko. Thank you, Mr. Chairman.

Just recently, Mr. Mueller, you said -- Mr. Lieu was asking you questions. And Mr. Lieu's question, I quote, the reason you didn't indict the President is because of the OLC opinion. And you answered, that is correct. But that is not what you said in the report, and it's not what you told Attorney General Barr.

And, in fact, in a joint statement that you released with DOJ on May 29, after your press conference, your office issued a joint statement with the Department of Justice that said: The Attorney General has previously stated that the special counsel repeatedly affirmed that he was not saying that but for the OLC opinion he

would have found the President obstructed justice. The special counsel's report and his statement today made clear that the office concluded it would not reach a determination one way or the other whether the President committed a crime. There is no conflict between these statements.

So, Mr. Mueller, do you stand by your joint statement with DOJ that you issued on May 29 as you sit here today?

Mr. Mueller. I would have to look at it more closely before I said I agree with it.

Mrs. Lesko. Well, so, you know, my conclusion is that what you told Mr. Lieu really contradicts what you said in the report, and specifically what you said apparently repeatedly to Attorney General Barr that -- and then you issued a joint statement on May 29 saying that the Attorney General has previously stated that the special counsel repeatedly affirmed that he was not saying but for the OLC report that we would have found the President obstructed justice, so I just say there's a conflict.

I do have some more questions. Mr. Mueller, there's been a lot of talk today about firing the special counsel and curtailing the investigation. Were you ever fired, Mr. Mueller?

Mr. Mueller. Was I what?

Mrs. Lesko. Were you ever fired as special counsel, Mr. Mueller?

Mr. Mueller. Not that I -- no.

Mrs. Lesko. No. Were you allowed to complete your

investigation unencumbered?

Mr. Mueller. Yes.

Mrs. Lesko. And, in fact, you resigned as special counsel when you closed up the office in late May 2019. Is that correct?

Mr. Mueller. That's correct.

Mrs. Lesko. Thank you.

Mr. Mueller, on April 18, the Attorney General held a press conference in conjunction with the public release of your report. Did Attorney General Barr say anything inaccurate, either in his press conference or his March 24 letter to Congress, summarizing the principal conclusions of your report?

Mr. Mueller. Well, what you are not mentioning is a letter we sent on March 27 to Mr. Barr that raised some issues, and that letter speaks for itself.

Mrs. Lesko. But then I don't see how you could -- that could be since AG Barr's letter detailed the principal conclusions of your report, and you have said before that -- that there wasn't anything inaccurate. In fact, you have this joint statement. But let me go on to another question.

Mr. Mueller, rather than purely relying on the evidence provided by witnesses and documents, I think you relied a lot on media. I'd like to know how many times you cited The Washington Post in your report.

Mr. Mueller. How many times I what?

Mrs. Lesko. Cited The Washington Post in your report.

Mr. Mueller. I do not have knowledge of that figure, but I -- well, that's it. I don't have knowledge of that figure.

Mrs. Lesko. I counted about 60 times.

How many times did you cite The New York Times? I counted --

Mr. Mueller. Again, I have no idea.

Mrs. Lesko. I counted about 75 times.

How many times did you cite Fox News?

Mr. Mueller. As with the other two, I have no idea.

Mrs. Lesko. About 25 times.

I've got to say it looks like Volume II is mostly regurgitated press stories. Honestly, there's almost nothing in Volume II that I didn't already hear or know simply by having a \$50 cable news subscription. However, your investigation cost the American taxpayers \$25 million.

Mr. Mueller, you cited media reports nearly 200 times in your report. Then in a footnote, a small footnote, No. 7, page 15 of Volume II of your report, you wrote, I quote, this section summarizes and cites various news stories, not for the truth of the information contained in the stories, but rather, to place candidate Trump's response to those stories in context.

Since nobody but lawyers reads footnotes, are you concerned that the American public took the embedded news stories --

Chairman Nadler. The time of the gentlelady has expired. The gentlelady from Washington.

Mrs. Lesko. Can Mr. Mueller answer the question?

Chairman Nadler. No. No. No. We're running short on time.  
I said the gentlelady from Washington.

Ms. Jayapal. Thank you.

Director Mueller, let's turn to the fifth of the obstruction episodes in your report, and that is the evidence of whether President Trump engaged in witness tampering with Trump campaign chairman Paul Manafort, whose foreign ties were critical to your investigation into Russia's interference in our elections. And this starts at Volume II, page 123.

Your office got indictments against Manafort and Trump deputy campaign manager Rick Gates in two different jurisdictions, correct?

Mr. Mueller. Correct.

Ms. Jayapal. And your office found that after a grand jury indicted them, Manafort told Gates not to plead guilty to any charges because, quote, he had talked to the President's personal counsel, and they were going to take care of us. Is that correct?

Mr. Mueller. That's accurate.

Ms. Jayapal. And according to your report, 1 day after Manafort's conviction on eight felony charges, quote, the President said that flipping was not fair and almost ought to be outlawed. Is that correct?

Mr. Mueller. I'm aware of that.

Ms. Jayapal. In this context, Director Mueller, what does it mean to flip?

Mr. Mueller. Have somebody cooperate in a criminal investigation.

Ms. Jayapal. And how essential is that cooperation to any efforts to combat crime?

Mr. Mueller. I'm not going to go beyond that, characterizing that effort.

Ms. Jayapal. Thank you.

In your report, you concluded that President Trump and his personal counsel, Rudy Giuliani, quote, made repeated statements suggesting that a pardon was a possibility for Manafort, while also making it clear that the President did not want Manafort to flip and cooperate with the government, end quote. Is that correct?

Mr. Mueller. Correct.

Ms. Jayapal. And as you stated earlier, witness tampering can be shown where someone with an improper motive encourages another person not to cooperate with law enforcement. Is that correct?

Mr. Mueller. Correct.

Ms. Jayapal. Now, on page 123 of Volume II, you also discuss the President's motive, and you say that as court proceedings moved forward against Manafort, President Trump, quote, discussed with aides whether and in what way Manafort might be cooperating and whether Manafort knew any information that would be harmful to the President, end quote. Is that correct?



Mr. Mueller. And that was a quote from?

Ms. Jayapal. From page 123, Volume II.

Mr. Mueller. I have that. Thank you. Yes.

Ms. Jayapal. And when someone tries to stop another person from working with law enforcement and they do it because they're worried about what that person will say, it seems clear from what you wrote that this is a classic definition of witness tampering.

Now, Mr. Manafort did eventually decide to cooperate with your office, and he entered into a plea agreement, but then he broke that agreement. Can you describe what he did that caused you to tell the court that the agreement was off?

Mr. Mueller. I refer you to the court proceedings on that issue.

Ms. Jayapal. So on page 127 of Volume II, you told the court that Mr. Manafort lied about a number of matters that were material to the investigation, and you said that Manafort's lawyers also, quote, regularly briefed the President's lawyers on topics discussed and the information that Manafort had provided in interviews with the Special Counsel's Office. Does that sound right?

Mr. Mueller. And the source of that is?

Ms. Jayapal. That's page 127, Volume II. That's a direct quote.

Mr. Mueller. If it's from the report, yes, I support it.

Ms. Jayapal. Thank you.

And 2 days after you told the court that Manafort broke his plea agreement by lying repeatedly, did President Trump tell the press that Mr. Manafort was, quote, very brave because he did not flip? This is page 128 of Volume II.

Mr. Mueller. If it's in the report, I support it as it is -- as it is set forth.

Ms. Jayapal. Thank you.

Director Mueller, in your report, you make a very serious conclusion about the evidence regarding the President's involvement with the Manafort criminal proceedings. Let me read to you from your report.

Evidence concerning the President's conduct toward Manafort indicates that the President intended to encourage Manafort to not cooperate with the government. It is clear that the President, both publicly and privately, discouraged Mr. Manafort's cooperation or flipping, while also dangling the promise of a pardon if he stayed loyal and did not share what he knew about the President. Anyone else who did these things would be prosecuted for them. We must ensure that no one is above the law.

And I thank you for being here, Director Mueller.

I yield back.

Chairman Nadler. The gentleman from Pennsylvania.

Mr. Reschenthaler. Thank you, Mr. Chairman.

Mr. Mueller, I'm over here. I'm sorry.

Mr. Mueller, are you familiar with the now expired

Independent Counsel Statute? It's the statute under which Ken Starr was appointed.

Mr. Mueller. That Ken Starr did what? I'm sorry.

Mr. Reschenthaler. Are you familiar with the Independent Counsel Statute?

Mr. Mueller. Are you talking about the one we're operating now or a previous?

Mr. Reschenthaler. No, under which Ken Starr was appointed.

Mr. Mueller. I am not that familiar with that, but I'd be happy to take your question.

Mr. Reschenthaler. Well, the Clinton administration allowed the Independent Counsel Statute to expire after Ken Starr's investigation. The final report requirement was a major reason why the statute was allowed to expire. Even President Clinton's AG, Janet Reno, expressed concerns about the final report requirement. And I will quote AG Reno.

She said: On one hand, the American people have an interest in knowing the outcome of an investigation of their highest officials. On the other hand, the report requirement cuts against many of the most basic traditions and practices of American law enforcement. Under our system, we presume innocence, and we value privacy. We believe that information obtained during criminal investigations should, in most cases, be made public only if there's an indictment and prosecution, not in a lengthy and detailed report filed after a decision has been made not to

prosecute. The final report provides a forum for unfairly airing any target's dirty laundry. It also creates yet another incentive for an independent counsel to overinvestigate in order to justify his or her tenure and to avoid criticism that the independent counsel may have left a stone unturned.

Again, Mr. Mueller, those are AG Reno's words. Didn't you do exactly what AG Reno feared? Didn't you publish a lengthy report unfairly airing the target's dirty laundry without recommending charges?

Mr. Mueller. I disagree with that, and I -- may I finish?

Mr. Reschenthaler. Did any of your witnesses have a chance to be cross-examined?

Mr. Mueller. Can I just finish my answer on this?

Mr. Reschenthaler. Quickly.

Mr. Mueller. I operate under the current statute, not the original statute, so I am most familiar with the current statute, not the older statute.

Mr. Reschenthaler. Did any of the witnesses have a chance to be cross-examined?

Mr. Mueller. Did any of the witnesses in our investigation?

Mr. Reschenthaler. Yes.

Mr. Mueller. I'm not going to answer that.

Mr. Reschenthaler. Did you allow the people mentioned in your report to challenge how they were characterized?

Mr. Mueller. I'm not going to get into that.

Mr. Reschenthaler. Okay. Given that AG Barr stated multiple times during his confirmation hearing that he would make as much of your report public as possible, did you write your report knowing that it would likely be shared with the public?

Mr. Mueller. No.

Mr. Reschenthaler. Did knowing that the report could and likely would be made public, did that alter the contents which you included?

Mr. Mueller. I can't speak to that.

Mr. Reschenthaler. Despite the expectations that your report would be released to the public, you left out significant exculpatory evidence, in other words, evidence favorable to the President, correct?

Mr. Mueller. Well, I actually would disagree with you. I think we strove to put into the report the exculpatory evidence as well.

Mr. Reschenthaler. One of my colleagues got into that with you where you said there was evidence you left out.

Mr. Mueller. Well, you make a choice as to what goes into an indictment.

Mr. Reschenthaler. Isn't it true, Mr. Mueller, isn't it true that on page 1 of Volume II, you state when you're quoting the statute you have an obligation to either prosecute or not prosecute?

Mr. Mueller. Well, generally that is the case, although most

cases are not done in the context of the President.

Mr. Reschenthaler. And in this case, you made a decision not to prosecute, correct?

Mr. Mueller. No. We made a decision not to decide whether to prosecute or not.

Mr. Reschenthaler. So, essentially, what your report did was everything that AG Reno warned against?

Mr. Mueller. I can't agree with that characterization.

Mr. Reschenthaler. Well, what you did is you compiled nearly 450 pages of the very worst information you gathered against the target of your investigation, who happens to be the President of the United States, and you did this knowing that you were not going to recommend charges and that the report would be made public.

Mr. Mueller. Not true.

Mr. Reschenthaler. Mr. Mueller, as a former officer in the United States JAG Corps, I prosecuted nearly 100 terrorists in a Baghdad courtroom. I cross-examined the butcher of Fallujah in defense of our Navy SEALs. As a civilian, I was elected a magisterial district judge in Pennsylvania, so I am very well versed in the American legal system.

The drafting and the publication of some of the information in this report without an indictment, without prosecution, frankly, flies in the face of American justice. And I find those facts and this entire process un-American.

I yield the remainder of my time to my colleague, Jim Jordan.

Mr. Jordan. Director Mueller, the third FISA renewal happens a month after you're named special counsel. What role did your office play in the third FISA renewal of Carter Page?

Mr. Mueller. I'm not going to talk to that.

Chairman Nadler. The time of the gentleman has expired.

The gentlelady from Florida.

Mrs. Demings. Director Mueller, a couple of my colleagues -- right here -- wanted to talk to you or ask you about lies, so let's talk about lies. According to your report, page 9, Volume I, witnesses lied to your office and to Congress. Those lies materially impaired the investigation of Russia interference, according to your report.

Other than the individuals who pled guilty to crimes based on their lying to you and your team, did other witnesses lie to you?

Mr. Mueller. I think there are probably a spectrum of witnesses in terms of those who are not telling the full truth and those who are outright liars.

Mrs. Demings. Thank you very much.

Outright liars. It is fair to say, then, that there were limits on what evidence was available to your investigation of both Russia election interference and obstruction of justice?

Mr. Mueller. That's true and is usually the case.

Mrs. Demings. And that lies about Trump campaign officials and administration officials impeded your investigation?

Mr. Mueller. I would generally agree with that.

Mrs. Demings. Thank you so much, Director Mueller. You will be hearing more from me in the next hearing.

So I yield the balance of my time to Mr. Correa. Thank you.

Mr. Correa. Mr. Mueller, first of all, let me welcome you. Thank you for your service to our country. You're a hero, Vietnam war vet, a wounded war vet. We won't forget your service to our country.

Mr. Mueller. Thank you, sir.

Mr. Correa. If I may begin. Because of time limits, we have gone in depth on only five possible episodes of obstruction. There's so much more, and I want to focus on another section of obstruction, which is the President's conduct concerning Michael Flynn, the President's National Security Advisor.

In early 2017, the White House Counsel and the President were informed that Mr. Flynn had lied to government authorities about his communications with the Russian Ambassador during the Trump campaign and transition. Is this correct?

Mr. Mueller. Correct.

Mr. Correa. If a hostile nation knows that a U.S. official has lied publicly, that can be used to blackmail that government official, correct?

Mr. Mueller. I'm not going to speak to that. I don't disagree with it necessarily, but I'm not going to speak any more to that issue.



Mr. Correa. Thank you very much, sir.

Flynn resigned on February 13, 2016, and the very next day, when the President was having lunch with New Jersey Governor Chris Christie, did the President say, open quotes, now that we fired Flynn, the Russia thing is over, close quote? Is that correct?

Mr. Mueller. Correct.

Mr. Correa. And is it true that Christie responded by saying, open quotes, no way, and this Russia thing is far from over, close quote?

Mr. Mueller. That's the way we have it in the report.

Mr. Correa. Thank you.

And after the President met with Christie, later that same day, the President arranged to meet with then FBI Director James Comey alone in the Oval Office, correct?

Mr. Mueller. Correct, particularly if you have the citation to the report.

Mr. Correa. Page 39-40, Volume II.

Mr. Mueller. Thank you very much.

Mr. Correa. And according to Comey, the President told him, open quote, I hope you can see your way clear to letting this thing go, to letting Flynn go. He's a good guy, and I hope you can let it go, close quote. Page 40, Volume II.

Mr. Mueller. Accurate.

Mr. Correa. What did Comey understand the President to be asking?

Mr. Mueller. I'm not going to get into what was in Mr. Comey's mind.

Mr. Correa. Comey understood this to be a direction because of the President's position and the circumstances of the one-to-one meeting? Page 40, Volume II.

Mr. Mueller. Well, I understand it's in the report, and I support it as being in the report.

Mr. Correa. Thank you, sir.

Even though the President publicly denied telling Comey to drop the investigation, you found, open quote, substantial evidence corroborating Comey's account over the President's. Is this correct?

Mr. Mueller. That's correct.

Mr. Correa. The President fired Comey on May 9. Is that correct, sir?

Mr. Mueller. I believe that's the accurate date.

Mr. Correa. That's page 77, Volume II.

You found substantial evidence that the catalyst for the President's firing of Comey was Comey's, open quote, unwillingness to publicly state that the President was not personally under investigation.

Mr. Mueller. I'm not going to delve more into the details of what happened. If it's in the report, again, I'll support it because it's already been reviewed and appropriately appears in the report.

Mr. Correa. And that's page 75, Volume II.

Mr. Mueller. Thank you.

Mr. Correa. Thank you.

And, in fact, the very next day, the President told the Russian foreign minister, open quote, I just fired the head of the FBI. He was crazy, a real nut job. I faced great pressure because of Russia. That's taken off. I'm not under investigation, close quote. Is that correct?

Mr. Mueller. If that's what was written in the report, yes.

Chairman Nadler. The time of the gentleman has expired.

Mr. Correa. Thank you, sir.

Chairman Nadler. The gentleman from Virginia.

Mr. Cline. Thank you, Mr. Chairman.

Mr. Mueller, we've heard a lot about what you're not going to talk about today. So let's talk about something that you should be able to talk about, the law itself, the underlying obstruction statute and your creative legal analysis of the statutes in Volume II, particularly an interpretation of 18 U.S.C. 1512 C. Section 1512 C is an obstruction of justice statute created as part of auditing financial regulations for public companies. And as you write on page 164 of Volume II, this provision was added as a floor amendment in the Senate and explained as closing a certain loophole with respect to document shredding.

And to read the statute, whoever corruptly alters, destroys, mutilates, or conceals a record, document, or other object or

attempts to do so with the intent to impair the object's integrity or availability for use in an official proceeding or otherwise obstructs, influences, or impedes any official proceeding or attempts to do so shall be fined under the statute and imprisoned not more than 20 years or both.

Your analysis and application of the statute proposes to give clause C2 a much broader interpretation than commonly used. First, your analysis proposes to read clause C2 in isolation, reading it as a freestanding, all-encompassing provision prohibiting any act influencing a proceeding if done with an improper motive. And second, your analysis of the statute proposes to apply the sweeping prohibition to lawful acts taken by public officials exercising their discretionary powers if those acts influence a proceeding.

So, Mr. Mueller, I'd ask you, in analyzing the obstruction, you state that you recognize that the Department of Justice and the courts have not definitively resolved these issues, correct?

Mr. Mueller. Correct.

Mr. Cline. You would agree that not everyone in the Justice Department agreed with your legal theory of the obstruction of justice statute, correct?

Mr. Mueller. I'm not going to be involved in a discussion on that at this juncture.

Mr. Cline. In fact, the Attorney General himself disagrees with your interpretation of the law, correct?

Mr. Mueller. I leave that to the Attorney General to identify.

Mr. Cline. And you would agree that prosecutors sometimes incorrect apply the law, correct?

Mr. Mueller. I would have to agree with that one, yes.

Mr. Cline. And members of your legal team, in fact, have had convictions overturned because they were based on an incorrect legal theory, correct?

Mr. Mueller. I don't know to what you aver. We've all spent time in the trenches trying cases and not won every one of those cases.

Mr. Cline. Well, let me ask you about one in particular. One of your top prosecutors, Andrew Weissmann, obtained a conviction against auditing firm Arthur Andersen, lower court, which was subsequently overturned in a unanimous Supreme Court decision that rejected the legal theory advanced by Weissmann, correct?

Mr. Mueller. Well, I'm not going to get into that, delve into that.

Mr. Cline. Well, let me read from that and maybe it will --

Mr. Mueller. May I just finish? May I just finish --

Mr. Cline. Yes.

Mr. Mueller. -- my answer to say that I'm not going to be -- get involved in a discussion on that. I will refer you to that citation that you gave me at the outset for the lengthy

discussion on just what you're talking about. And to the extent that I have anything to say about it, it is what we've already put into the report on that issue.

Mr. Cline. I am reading from your report when discussing this section. I will read from the decision of the Supreme Court unanimously reversing Mr. Weissmann when he said, indeed, it's striking how little culpability the instructions required. For example, the jury was told that even if petitioner honestly and sincerely believed its conduct was lawful, the jury could convict. The instructions also diluted the meaning of corruptly such that it covered innocent conduct.

Mr. Mueller. Well, let me just say --

Mr. Cline. Let me move on. I have limited time.

Your report takes the broadest possible reading of this provision in applying it to the President's official acts, and I'm concerned about the implications of your theory for overcriminalizing conduct by public officials and private citizens alike.

So to emphasize how broad your theory of liability is, I want to ask you about a few examples. On October 11, 2015, during an FBI investigation into Hillary Clinton's use of a private email server, President Obama said, I don't think it posed a national security problem. And he later said, I can tell you that this is not a situation in which America's national security was endangered.

Assuming for a moment that his comments did influence the investigation, couldn't President Obama be charged, under your interpretation, with obstruction of justice?

Mr. Mueller. Well, again, I'd refer you to the report. But let me say with Andrew Weissmann, who is one of the more talented attorneys that we have on board --

Mr. Cline. Okay. Well, I'll take that as --

Mr. Mueller. -- over a period of time, he has run a number of units.

Mr. Cline. I have very little time.

In August 2015, a very senior DOJ official called FBI Deputy Director Andrew McCabe expressing concern that FBI agents were still openly pursuing the Clinton Foundation probe. The DOJ official was apparently very pissed off, quote/unquote. McCabe questioned this official, asking, are you telling me I need to shut down a validly predicated investigation, to which the official replied, of course not.

This seems to be a clear example of somebody within the executive branch attempting to influence an FBI investigation. So under your theory, couldn't that person be charged with obstruction as long as the prosecutor could come up with a potentially corrupt motive?

Mr. Mueller. I refer you to our lengthy dissertation on exactly those issues that appears at the end of the report.

Mr. Cline. Mr. Mueller, I'd argue that it says above the

Supreme Court equal justice --

Chairman Nadler. The time of the gentleman has expired.

Our intent was to conclude this hearing in 3 hours. Given the break, that would bring us to approximately 11:40. With Director Mueller's indulgence, we will be asking our remaining Democratic members to voluntarily limit their time below the 5 minutes so that we can complete our work as close to that timeframe as possible.

And I recognize the gentlelady from Pennsylvania.

Ms. Scanlon. Thank you.

Director Mueller, I want to ask you some questions about the President's statements regarding advance knowledge of the WikiLeaks dumps. So the President refused to sit down with your investigators for an in-person interview, correct?

Mr. Mueller. Correct.

Ms. Scanlon. So the only answers we have to questions from the President are contained in Appendix C to your report?

Mr. Mueller. That's correct.

Ms. Scanlon. Okay. So looking at Appendix C on page 5, you asked the President over a dozen questions about whether he had knowledge that WikiLeaks possessed or might possess the emails that were stolen by the Russians.

Mr. Mueller. I apologize.

Ms. Scanlon. Sure.

Mr. Mueller. Can you start it again?



Ms. Scanlon. Okay. Sure.

Mr. Mueller. Thank you.

Ms. Scanlon. So we are looking at Appendix C.

Mr. Mueller. Right.

Ms. Scanlon. And at Appendix C, page 5, you ask the President about a dozen questions about whether he had knowledge that WikiLeaks possessed the stolen emails that might be released in a way helpful to his campaign or harmful to the Clinton campaign. Is that correct? You asked those questions?

Mr. Mueller. Yes.

Ms. Scanlon. Okay. In February of this year, Mr. Trump's personal attorney, Michael Cohen, testified to Congress under oath that, quote: Mr. Trump knew from Roger Stone in advance about the WikiLeaks drop of emails, end quote.

That is a matter of public record, isn't it?

Mr. Mueller. Well, are you referring to the report or some other public record?

Ms. Scanlon. This was testimony before Congress by Mr. Cohen. Do you know if he told you --

Mr. Mueller. I am not familiar with -- explicitly familiar with what he testified to before Congress.

Ms. Scanlon. Okay. Let's look at an event described on page 18 of Volume II of your report. Now, according -- and we are going to put it up in a slide, I think. According to Deputy Campaign Manager Rick Gates, in the summer of 2016, he and

candidate Trump were on the way to an airport shortly after WikiLeaks released its first set of stolen emails. And Gates told your investigators that candidate Trump was on a phone call, and when the call ended, Trump told Gates that more releases of damaging information would be coming, end quote. Do you recall that from the report?

Mr. Mueller. If it is in the report, I support it.

Ms. Scanlon. Okay. And that is on page 18 of Volume II. Now, on page 77 of Volume II, your report also stated, quote: In addition, some witnesses said that Trump privately sought information about future WikiLeaks releases, end quote. Is that correct?

Mr. Mueller. Correct.

Ms. Scanlon. Now, in Appendix C where the President did answer some written questions, he said, quote: I do not recall discussing WikiLeaks with him, nor do I recall being aware of Mr. Stone having discussed WikiLeaks with individuals associated with my campaign, end quote. Is that correct?

Mr. Mueller. If it is from the report, it is correct.

Ms. Scanlon. Okay. So is it fair to say the President denied ever discussing WikiLeaks with Mr. Stone and denied being aware that anyone associated with his campaign discussed WikiLeaks with Stone?

Mr. Mueller. I am sorry. Could you repeat that one?

Ms. Scanlon. Is it fair, then, that the President denied

knowledge of himself or anyone else discussing WikiLeaks dumps with Mr. Stone?

Mr. Mueller. Yes. Yes.

Ms. Scanlon. Okay. And, with that, I would yield back.

Mr. Mueller. Thank you, ma'am.

Chairman Nadler. The gentlelady yields back.

The gentleman from Florida.

Mr. Steube. Thank you, Mr. Chair.

Mr. Mueller, did you indeed interview for the FBI Director job one day before you were appointed as special counsel?

Mr. Mueller. In my understanding, I was not applying for the job. I was asked to give my input on what it would take to do the job, which triggered the interview you are talking about.

Mr. Steube. So you don't recall on May 16, 2017, that you interviewed with the President regarding the FBI Director job?

Mr. Mueller. I interviewed with the President, but it wasn't about the Director job.

Mr. Steube. The FBI Director job?

Mr. Mueller. It was about the job but not about me applying for the job.

Mr. Steube. So your statement here today is that you didn't interview to apply for the FBI Director job?

Mr. Mueller. That is correct.

Mr. Steube. So did you tell the Vice President that the FBI Director position would be the one job that you would come back

for?

Mr. Mueller. I don't recall that one.

Mr. Steube. You don't recall that?

Mr. Mueller. No.

Mr. Steube. Okay. Given your 22 months of investigation, tens of millions of dollars spent, and millions of documents reviewed, did you obtain any evidence at all that any American voter changed their vote as a result of Russian's election interference?

Mr. Mueller. I can't speak to that.

Mr. Steube. You can't speak to that?

Mr. Mueller. No.

Mr. Steube. After 22 months of investigation, there is not any evidence in that document before us that any voter changed their vote because of their interference, and I am asking you based on all of the documents that you reviewed.

Mr. Mueller. That was outside our purview.

Mr. Steube. Russian meddling was outside your purview?

Mr. Mueller. The impact of that meddling was undertaken by other agencies.

Mr. Steube. Okay. You stated in your opening statement that you would not get into the details of the Steele dossier. However, multiple times in Volume II on page 23, 27, and 28, you mentioned the unverified allegations. How long did it take you to reach the conclusion that it was unverified?

Mr. Mueller. I am not going to speak to that.

Mr. Steube. It is actually in your report multiple times as unverified, and you are telling me that you are not willing to tell us how you came to the conclusion that it was unverified?

Mr. Mueller. True.

Mr. Steube. When did you become aware that the unverified Steele dossier was included in the FISA application to spy on Carter Page?

Mr. Mueller. I am sorry. What was the question?

Mr. Steube. When did you become aware that the unverified Steele dossier was intended -- was included in the FISA application to spy on Carter Page?

Mr. Mueller. I am not going to speak to that.

Mr. Steube. Your team interviewed Christopher Steele. Is that correct?

Mr. Mueller. I am not going to get into that. As I said at the outset --

Mr. Steube. You can't tell this committee as to whether or not you interviewed Christopher Steele in a 22-month investigation with 18 lawyers?

Mr. Mueller. As I said at the outset, that is one of those -- one of the investigations that is being handled by others in the Department of Justice.

Mr. Steube. Yeah, but you're here testifying about this investigation today, and I am asking you directly, did any members

of your team or did you interview Christopher Steele in the course of your investigation?

Mr. Mueller. And I am not going to answer that question, sir.

Mr. Steube. You had 2 years to investigate. Not once did you consider or even investigate how an unverified document that was paid for by a political opponent was used to obtain a warrant to spy on the opposition political campaign. Did you do any investigation on that whatsoever?

Mr. Mueller. I do not accept your characterization of what occurred.

Mr. Steube. What would be your characterization?

Mr. Mueller. I am not going to speak any more to it.

Mr. Steube. So you can't speak any more to it, but you are not going to agree with my characterization. Is that correct?

Mr. Mueller. Yes.

Mr. Steube. The FISA application makes reference to Source 1, who is Christopher Steele, the author of the Steele dossier. The FISA application says nothing Source 1's reason for conducting the research into Candidate 1's ties to Russia based on Source 1's previous reporting history with FBI whereby Source 1 provided reliable information to the FBI. The FBI believes Source 1's reporting herein to be credible. Do you believe the FBI's representation that Source 1's reporting was credible to be accurate?

Mr. Mueller. I am not going to answer that.

Mr. Steube. So you are not going to respond to any of the questions regarding Christopher Steele or your interviews with him?

Mr. Mueller. Well, as I said at the outset this morning, that was one of the investigations that I could not speak to.

Mr. Steube. Well, I don't understand how if you interviewed an individual in the purview of this investigation that you are testifying to us today that you've closed that investigation, how that is not within the purview to tell us about that investigation and who you interviewed.

Mr. Mueller. I have nothing to add.

Mr. Steube. Okay. Well, I can guarantee that the American people want to know, and I am very hopeful and glad that AG Barr is looking into this and the inspector general is looking into this because you are unwilling to answer the questions of the American people as it relates to the very basis of this investigation into the President and the very basis of this individual who you did interview. You are just refusing to answer those questions. Can't the President fire the FBI Director at any time without reason under Article I of the Constitution?

Mr. Mueller. Yes.

Mr. Steube. Article II.

Mr. Mueller. Yes.

Mr. Steube. That is correct. Can he also fire you as

special counsel at any time without any reason?

Mr. Mueller. I believe that to be the case.

Mr. Steube. Under Article II.

Mr. Mueller. Well, hold on just a second. You said without any reason. I know that special counsel can be fired, but I am not sure it extends to whatever reason is given.

Mr. Steube. Well, and you've testified that you weren't fired. You were able to complete your investigation in full. Is that correct?

Mr. Mueller. I am not going to add to what I have stated before.

Mr. Steube. My time has expired.

Chairman Nadler. The gentleman's time has expired.

The gentlelady from Pennsylvania -- from Texas.

Ms. Garcia. Thank you, Mr. Chairman, and thank you, Mr. Mueller, for being with us. It is close to the afternoon now.

Director Mueller, now I would like to ask you about the President's answers relating to Roger Stone. Roger Stone was indicted for multiple Federal crimes, and the indictment alleges that Mr. Stone discussed future WikiLeaks email releases with the Trump campaign. Understanding there is a gag order on the Stone case, I will keep my questions restricted to publicly available information. Mr. Stone's --

Mr. Mueller. Let me just say at the outset. I don't mean to disrupt you, but I am not -- I would like some demarcation of that



which is applicable to this but also in such a way that it does not hinder the other prosecution that is taking place in D.C.

Ms. Garcia. I understand that. I am only going to be talking about the questions that you asked in writing to the President --

Mr. Mueller. Thank you, ma'am.

Ms. Garcia. -- that relate to Mr. Stone. Mr. Stone's indictment states, among other things, the following quote: Stone was contacted by senior Trump officials to inquire about future releases of Organization 1, Organization 1 being WikiLeaks. The indictment continues, quote: Stone thereafter told the Trump campaign about potential future release of damaging material by WikiLeaks. So, in short, the indictment alleges that Stone was asked by the Trump campaign to get information about more WikiLeaks releases and that Stone, in fact, did tell the Trump campaign about potential future releases, correct?

Mr. Mueller. Yes, ma'am, but I see you are quoting from the indictment. Even though the indictment is a public document, I feel uncomfortable discussing anything having to do with the Stone prosecution.

Ms. Garcia. Right. The indictment is of record, and we pulled it off the --

Mr. Mueller. I understand.

Ms. Garcia. I am reading straight from it. Well, turning back to the President's answers to your questions, then, on this

very subject, the President denied ever discussing future WikiLeaks releases with Stone and denied knowing whether anyone else on his campaign had those discussions with Stone. If you had learned that other witnesses -- putting aside the President, if other witnesses had lied to your investigators in response to specific questions, whether in writing or in an interview, could they be charged with false statement crimes?

Mr. Mueller. Well, I am not going to speculate. I think you are asking for me to speculate given a set of circumstances.

Ms. Garcia. Well, let's make it more specific. What if I had made a false statement to an investigator on your team? Could I go to jail for up to 5 years?

Mr. Mueller. Yes.

Ms. Garcia. Yes.

Mr. Mueller. Well, although -- it is Congress, so --

Ms. Garcia. Well, that is the point, though, isn't it, that no one is above the law?

Mr. Mueller. That is right.

Ms. Garcia. Not you, not the Congress, and certainly not the President. And I think it is just troubling to have to hear some of these things, and that is why the American people deserve to learn the full facts of the misconduct described in your report for which any other person would have been charged with crimes.

So thank you for being here, and again, the point has been underscored many times, but I will repeat it. No one is above the

law. Thank you.

Mr. Mueller. Thank you, ma'am.

Chairman Nadler. The gentleman from North Dakota is recognized.

Mr. Armstrong. Mr. Mueller, how many people did you fire? How many people on your staff did you fire during the course of the investigation?

Mr. Mueller. How many people?

Mr. Armstrong. Did you fire?

Mr. Mueller. I am not going to discuss that.

Mr. Armstrong. According to the inspector general's report, Attorney No. 2 was let go, and we know Peter Strzok was let go, correct?

Mr. Mueller. Yes, and there may have been other persons on other issues that have been either transferred or fired.

Mr. Armstrong. Peter Strzok testified before this committee on July 12, 2018, that he was fired because you were concerned about preserving the appearance of independence. Do you agree with his testimony?

Mr. Mueller. Say that again, if you could.

Mr. Armstrong. He said he was fired at least partially because you were worried about, concerned about preserving the appearance of independence with the special counsel's investigation. Do you agree with that statement?

Mr. Mueller. The statement was by whom?

Mr. Armstrong. Peter Strzok at this hearing.

Mr. Mueller. I am not familiar with that.

Mr. Armstrong. Did you fire him because you were worried about the appearance of independence of the investigation?

Mr. Mueller. No. He was transferred as a result of instances involving texts.

Mr. Armstrong. Do you agree that your office did not only have an obligation to operate with independence but to operate with the appearance of independence as well?

Mr. Mueller. Absolutely. We strove to do that over the 2 years.

Mr. Armstrong. Andrew Weissmann --

Mr. Mueller. Part of that was making certain that --

Mr. Armstrong. Andrew Weissmann is one of your top attorneys.

Mr. Mueller. Yes.

Mr. Armstrong. Did Weissmann have a role in selecting other members of your team?

Mr. Mueller. He had some role but not a major role.

Mr. Armstrong. Andrew Weissmann attended a Hillary Clinton's election night party. Did you know that before or after he came onto the team?

Mr. Mueller. I don't know when I found that out.

Mr. Armstrong. On January 30, 2017 Weissmann wrote an email to Deputy Attorney General Yates stating,

"I am so proud and in awe," regarding her disobeying a direct order from the President.

Did Weissmann disclose that email to you before he joined the team?

Mr. Mueller. I am not going to talk about that.

Mr. Armstrong. Is that not a conflict of interest?

Mr. Mueller. I am not going to talk about that.

Mr. Armstrong. Are you aware that Ms. Jeannie Rhee represented Hillary Clinton in litigation regarding personal emails originating from Clinton's time as Secretary of State?

Mr. Mueller. Yes.

Mr. Armstrong. Did you know that before she came on the team?

Mr. Mueller. No.

Mr. Armstrong. Aaron Zebley, the guy sitting next to you, represented Justin Cooper, a Clinton aide, who destroyed one of Clinton's mobile devices. And you must be aware by now that six of your lawyers donated \$12,000 directly to Hillary Clinton. I am not even talking about the \$49,000 they donated to other Democrats, just the donations to the opponent who was the target of your investigation.

Mr. Mueller. Can I speak for a second to the hiring practices?

Mr. Armstrong. Sure.

Mr. Mueller. We strove to hire those individuals that could

do the job.

Mr. Armstrong. Okay.

Mr. Mueller. I've been in this business for almost 25 years. And in those 25 years, I have not had occasion once to ask somebody about their political affiliation. It is not done. What I care about is the capability of the individual to do the job and do the job quickly and seriously and with integrity.

Mr. Armstrong. But that is what I am saying, Mr. Mueller. This isn't just about you being able to vouch for your team. This is about knowing that the day you accepted this role, you had to be aware, no matter what this report concluded, half of the country was going to be skeptical of your team's findings, and that is why we have recusal laws that define bias and perceived bias for this very reason. 28 United States Code 528 specifically lists not just political conflict of interest but the appearance of political conflict of interest. It is just simply not enough that you vouch for your team. The interest of justice demands that no perceived bias exist. I can't imagine a single prosecutor or judge that I have ever appeared in front of would be comfortable with these circumstances where over half of the prosecutorial team had a direct relationship to the opponent of the person being investigated.

RPTR ZAMORA

EDTR ZAMORA

[11:43 a.m.]

Mr. Mueller. Let me -- one other fact that I put on the table, and that is we hired 19 lawyers over a period of time. Of those 19 lawyers, 14 of them were transferred from elsewhere in the Department of Justice. Only five came from outside. So we did not have --

Mr. Armstrong. And half of them had a direct relationship, political or personal, with the opponent of the person you were investigating. And that's my point. I wonder if not a single word in this entire report was changed, but rather, the only difference was we switched Hillary Clinton and President Trump.

If Peter Strzok had texted those terrible things about Hillary Clinton instead of President Trump, if a team of lawyers worked for, donated thousands of dollars to, and went to Trump's parties instead of Clinton's, I don't think we'd be here trying to prop up an obstruction allegation.

My colleagues would have spent the last 4 months accusing your team of being bought and paid for by the Trump campaign and we couldn't trust a single word of this report. They would still be accusing the President of conspiracy with Russia, and they would be accusing your team of aiding and abetting with that conspiracy.

And with that, I yield back.

Chairman Nadler. The gentleman yields back.

The gentleman from Colorado.

Mr. Neguse. Director Mueller, thank you for your service to our country. I'd like to talk to you about one of the other incidents of obstruction, and that's the evidence in your report showing the President directing his son and his communications director to issue a false public statement in June of 2017 about a meeting between his campaign and Russian individuals at Trump Tower in June of 2016.

According to your report, Mr. Trump, Jr. was the only Trump associate who participated in that meeting and who declined to be voluntarily interviewed by your office. Is that correct?

Mr. Mueller. Yes.

Mr. Neguse. Did Mr. Trump, Jr. or his counsel ever communicate to your office any intent to invoke his Fifth Amendment right against self-incrimination?

Mr. Mueller. I'm not going to answer that.

Mr. Neguse. You did pose written questions to the President about his knowledge of the Trump Tower meeting. You included -- also asked him about whether or not he had directed a false press statement. The President did not answer at all that question, correct?

Mr. Mueller. I don't have it in front of me. I take your word.



Mr. Neguse. I can represent to you that appendix C, specifically C13, states as much.

According to page 100 of Volume II of your report, your investigation found that Hope Hicks, the President's communications director, in June of 2017 was shown emails that set up the Trump Tower meeting, and she told your office that she was, quote, shocked by the emails because they looked, quote, really bad. True?

Mr. Mueller. Do you have the citation?

Mr. Neguse. Sure. It's page 100 of Volume II.

While you're flipping to that page, Director Mueller, I will also tell you that according to page 99 of Volume II, those emails in question stated, according to your report, that the crown prosecutor of Russia had offered to provide the Trump campaign with some official documents and information that would incriminate Hillary and her dealings with Russia as part of Russia and its government support for Mr. Trump.

Trump Jr. responded, if it's what you say, I love it. And he, Kushner, and Manafort, met with the Russian attorneys and several other Russian individuals at Trump Tower on June 9, 2016, end quote. Correct?

Mr. Mueller. Generally accurate.

Mr. Neguse. Isn't it true that Ms. Hicks told your office that she went multiple times to the President to, quote, urge him that they should be fully transparent about the June 9 meeting,

end quote, but the President each time said no. Correct?

Mr. Mueller. Accurate.

Mr. Neguse. And the reason was because of those emails which the President, quote, believed would not leak, correct?

Mr. Mueller. Well, I'm not certain how it's characterized, but generally correct.

Mr. Neguse. Did the President direct Ms. Hicks to say, quote, only that Trump Jr. took a brief meeting and it was about Russian adoption, end quote, because Trump Jr.'s statement to The New York Times, quote, said too much, according to page 102 of Volume II?

Mr. Mueller. Okay.

Mr. Neguse. Correct?

Mr. Mueller. Let me just check one thing.

Yes.

Mr. Neguse. And according to Ms. Hicks, the President still directed her to say the meeting was only about Russian adoption, correct?

Mr. Mueller. Yes.

Mr. Neguse. Despite knowing that to be untrue.

Thank you, Director Mueller.

I yield back the balance of my time.

Mr. Mueller. The gentleman from Louisiana.

Mr. Johnson of Louisiana. Mr. Mueller, you've been asked -- over here on the far right, sir.

You've been asked a lot of questions here today. To be frank, you've performed as most of us expected. You've stuck closely to your report, and you have declined to answer many of our questions on both sides.

As the closer for the Republican side -- I know you're glad to get to the close -- I want to summarize the highlights of what we have heard and what we know.

You spent 2 years and nearly \$30 million taxpayer and unlimited resources to prepare a nearly 450-page report which you describe today as very thorough. Millions of Americans today maintain genuine concerns about your work, in large part, because of the infamous and widely publicized bias of your investigating team members, which we now know included 14 Democrats and zero Republicans.

Campaign finance reports later showed that team --

Mr. Mueller. Can I --

Mr. Johnson of Louisiana. Excuse me. It's my time. That team of Democrat investigators you hired donated more than \$60,000 to the Hillary Clinton campaign and other Democratic candidates. Your team also included Peter Strzok and Lisa Page, which have been discussed today, and they had the lurid text messages that confirmed they openly mocked and hated Donald Trump and his supporters and they vowed to take him out.

Mr. Ratcliffe asked you earlier this morning, quote, can you give me an example other than Donald Trump where the Justice

Department determined that an investigated person was not exonerated because their innocence was not conclusively determined, unquote. You answered, I cannot. Sir, that is unprecedented.

The President believed from the very beginning that you and your special counsel team had serious conflicts. This is stated in the report and acknowledged by everybody. And yet President Trump cooperated fully with the investigation. He knew he had done nothing wrong, and he encouraged all witnesses to cooperate with the investigation and produce more than 1.4 million pages of information and allowed over 40 witnesses, who were directly affiliated with the White House or his campaign.

Your report acknowledges on page 61, Volume II, that a volume of evidence exists of the President telling many people privately, quote, the President was concerned about the impact of the Russian investigation on his ability to govern and to address important foreign relations issues and even matters of national security.

And on page 174 of Volume II, your report also acknowledges that the Supreme Court has held, quote, the President's removal powers are at their zenith with respect to principal officers, that is officers who must be appointed by the President and who report to him directly. The President's exclusive and illimitable power of removal of those principal officers furthers the President's ability to ensure that the laws are faithfully executed, unquote. And that would even include the Attorney

General.

Look, in spite of all of that, nothing ever happened to stop or impede your special counsel's investigation. Nobody was fired by the President, nothing was curtailed, and the investigation continued unencumbered for 22 long months.

As you finally concluded in Volume I, the evidence, quote, did not establish that the President was involved in an underlying crime related to Russian election interference, unquote. And the evidence, quote, did not establish that the President or those close to him were involved in any Russian conspiracies or had an unlawful relationship with any Russian official, unquote.

Over those 22 long months that your investigation dragged along, the President became increasingly frustrated, as many of the American people did, with its affects on our country and his ability to govern. He vented about this to his lawyer and his close associates, and he even shared his frustrations, as we all know, on Twitter.

But while the President's social media accounts might have influenced some in the media or the opinion of some of the American people, none of those audiences were targets or witnesses in your investigation. The President never affected anybody's testimony; he never demanded to end the investigation or demanded that you be terminated; and he never misled Congress, the DOJ, or the special counsel. Those, sir, are undisputed facts.

There will be a lot of discussion, I predict, today and great

frustration throughout the country about the fact that you wouldn't answer any questions here about the origins of this whole charade, which was the infamous Christopher Steele dossier, now proven to be totally bogus, even though it is listed and specifically referenced in your report. But as our hearing is concluding, we apparently will get no comment on that from you.

Mr. Mueller, there's one primary reason why you were called here today by the Democrat majority of our committee. Our colleagues on the other side of the aisle just want political cover. They desperately wanted you today to tell them they should impeach the President. But the one thing you have said very clearly today is that your report is complete and thorough, and you completely agree with and stand by its recommendations and all of its content. Is that right?

Mr. Mueller. True.

Mr. Johnson of Louisiana. Mr. Mueller, one last important question. Your report does not recommend impeachment, does it?

Mr. Mueller. I'm not going to talk about the recommendations.

Mr. Johnson of Louisiana. It does not conclude that impeachment would be appropriate here, right?

Mr. Mueller. I'm not going to talk -- I'm not going to talk about that issue.

Mr. Johnson of Louisiana. That's one of the many things you wouldn't talk about today, but I think we can all draw our own

conclusions.

I do thank you for your service to the country. And I'm glad this charade will come to an end soon and we can get back to the important business of this committee with its broad jurisdiction of so many important issues for the country.

With that, I yield back.

Chairman Nadler. The gentleman yields back.

I want to announce that our intent was to conclude this hearing at around 11:45. All of the Republican members have now asked their questions, but we have a few remaining Democratic members. They will be limiting their questions, so with Director Mueller's indulgence, we expect to finish within 15 minutes.

The gentlelady from Georgia is recognized.

Mrs. McBath. Thank you, Mr. Chairman.

And thank you, Director Mueller. Your investigations of the Russian attack on our democracy and of obstruction of justice were extraordinarily productive. And under 2 years, you charged at least 37 people or entities with crimes. You convicted seven individuals, five of whom were top Trump campaign or White House aides. Charges remain pending against more than 2 dozen Russian persons or entities and against others.

Now, let me start with those five Trump campaign administration aides that you convicted. Would you agree with me that they are Paul Manafort, President Trump's campaign manager; Rick Gates, President Trump's deputy campaign manager; Michael

Flynn, President Trump's former National Security Advisor; Michael Cohen, the President's personal attorney; George Papadopoulos, President Trump's former campaign foreign policy adviser, correct?

Mr. Mueller. Correct.

Mrs. McBath. And the sixth Trump associate will face trial later this year, correct? And that person would be Roger Stone, correct?

Mr. Mueller. Correct.

Mrs. McBath. Thank you.

Mr. Mueller. Well, I'm not certain what you said about Stone, but he is in another court system, as I indicated before.

Mrs. McBath. Exactly. He's still under investigation.

Mr. Mueller. And I do not want to discuss.

Mrs. McBath. Correct. Thank you.

And there are many other charges as well, correct?

Mr. Mueller. Correct.

Mrs. McBath. So, sir, I just want to thank you so much, in my limited time today, for your team, the work that you did, and your dedication. In less than 2 years, your team was able to uncover an incredible amount of information related to Russia's attack on our elections and to obstruction of justice.

And there is still more that we have to learn. Despite facing unfair attacks by the President and even here today, your work has been substantive and fair. The work has laid the critical foundation for our investigation, and for that, I thank



you. I thank you.

And with that, I yield back the balance of my time.

Chairman Nadler. The gentlelady yields back.

The gentleman from Arizona.

Mr. Stanton. Thank you.

Director Mueller, I'm disappointed that some have questioned your motives throughout this process, and I want to take a moment to remind the American people of who you are and your exemplary service to our country.

You are a Marine, you served in Vietnam and earned a Bronze Star and a Purple Heart, correct?

Mr. Mueller. Correct.

Mr. Stanton. Which President appointed you to become the United States attorney for Massachusetts?

Mr. Mueller. Which Senator?

Mr. Stanton. Which President?

Mr. Mueller. Oh, which President. I think that was President Bush.

Mr. Stanton. According to my notes, it was President Ronald Reagan had the honor to do so.

Under whose --

Mr. Mueller. My mistake.

Mr. Stanton. Under whose administration did you serve as the assistant attorney general in charge of the DOJ's Criminal Division?

Mr. Mueller. Under which President?

Mr. Stanton. Yep.

Mr. Mueller. That would be George Bush I.

Mr. Stanton. That is correct, President George H.W. Bush.

After that, you took a job at a prestigious law firm, and after only a couple years, you did something extraordinary. You left that lucrative position to reenter public service prosecuting homicides here in Washington, D.C. Is that correct?

Mr. Mueller. Correct.

Mr. Stanton. When you were named Director of the FBI, which President first appointed you?

Mr. Mueller. Bush.

Mr. Stanton. And the Senate confirmed you with a vote of 98 to 0, correct?

Mr. Mueller. Surprising.

Mr. Stanton. And you were sworn in as Director just one week before the September 11 attacks.

Mr. Mueller. True.

Mr. Stanton. You helped to protect this Nation against another attack. You did such an outstanding job that when your 10-year term expired, the Senate unanimously voted to extend your term for another 2 years, correct?

Mr. Mueller. True.

Mr. Stanton. When you were asked in 2017 to take the job as special counsel, the President had just fired FBI Director James

Comey. The Justice Department and the FBI were in turmoil. You must have known there would be an extraordinary challenge. Why did you accept?

Mr. Mueller. I'm not going to get into -- that's a little bit off track. It was a challenge, period.

Mr. Stanton. Some people have attacked the political motivations of your team, even suggested your investigation was a witch hunt. When you considered people to join your team, did you ever even once ask about their political affiliation?

Mr. Mueller. Never once.

Mr. Stanton. In your entire career as a law enforcement official, have you ever made a hiring decision based upon a person's political affiliation?

Mr. Mueller. No.

Mr. Stanton. I'm not surprised --

Mr. Mueller. And if I might just interject, the capabilities that we have shown in the report that's been discussed here today was a result of a team of agents and lawyers who were absolutely exemplary and were hired because of the value they could contribute to getting the job done and getting it done expeditiously.

Mr. Stanton. Sir, you're a patriot. And clear to me in reading your report and listening to your testimony today, you acted fairly and with restraint. There were circumstances where you could have filed charges against other people mentioned in the

report but you declined. Not every prosecutor does that, certainly not one on a witch hunt.

The attacks made against you and your team intensified because your report is damning. And I believe you did uncover substantial evidence of high crimes and misdemeanors.

Let me also say something else that you were right about. The only remedy for this situation is for Congress to take action.

I yield back.

Chairman Nadler. The gentleman yields back.

The gentlelady from Pennsylvania.

Ms. Dean. Good morning, Director Mueller. Madeleine Dean.

Mr. Mueller. Ah, gotcha. Sorry.

Ms. Dean. Thank you.

I wanted to ask you about public confusion connected with Attorney General Barr's release of your report. I will be quoting your March 27 letter.

Sir, in that letter, and at several other times, did you convey to the Attorney General that the, quote, introductions and executive summaries of our two-volume report accurately summarize this office's work and conclusions, end quote?

Mr. Mueller. I have to say that the letter itself speaks for itself.

Ms. Dean. And those were your words in that letter.

Continuing with your letter, you wrote to the Attorney General that, quote, the summary letter that the Department sent

to Congress and released to the public late in the afternoon of March 24 did not fully capture the context, nature, and substance of this office's work and conclusions, end quote. Is that correct?

Mr. Mueller. Again, I rely on the letter itself for its terms.

Ms. Dean. Thank you.

What was it about the report's context, nature, substance that the Attorney General's letter did not capture?

Mr. Mueller. I think we captured that in the March 27 responsive letter.

Ms. Dean. And this is from the 27th letter. What were some of the specifics that you thought --

Mr. Mueller. I direct you to the letter itself.

Ms. Dean. Okay. You finished that letter by saying, there is now public confusion about critical aspects as a result of our investigation. Could you tell us specifically some of the public confusion you identified?

Mr. Mueller. Not generally. Again, I go back to the letter. The letters speaks for itself.

Ms. Dean. And could Attorney General Barr have avoided public confusion if he had released your summaries and executive introduction and summaries?

Mr. Mueller. I don't feel comfortable speculating on that.

Ms. Dean. Shifting to May 30, the Attorney General, in an

interview with CBS News, said that you could have reached -- quote, you could have reached a decision as to whether it was criminal activity, end quote, on the part of the President. Did the Attorney General or his staff ever tell you that he thought you should make a decision on whether the President engaged in criminal activity?

Mr. Mueller. I'm not going to speak to what the Attorney General was thinking or saying.

Ms. Dean. If the Attorney General had directed you or ordered you to make a decision on whether the President engaged in criminal activity, would you have so done?

Mr. Mueller. I can't answer that question in the vacuum.

Ms. Dean. Director Mueller, again, I thank you for being here. I agree with your March 27 letter. There was public confusion, and the President took full advantage of that confusion by falsely claiming your report found no obstruction.

Let us be clear, your report did not exonerate the President; instead, it provided substantial evidence of obstruction of justice leaving Congress to do its duty. We shall not shrink from that duty.

I yield back.

Chairman Nadler. The gentlelady yields back. The --

Mr. Johnson of Louisiana. Mr. Chairman, I have a point of inquiry, over on your left.

Chairman Nadler. The gentleman will state his point of

inquiry.

Mr. Johnson of Louisiana. Was the point of this hearing to get Mr. Mueller to recommended impeachment?

Mr. Mueller. That is not a fair point of inquiry.

The gentlelady from Florida is recognized.

Mr. Johnson of Louisiana. Mr. Chairman?

Chairman Nadler. The gentlelady from Florida is recognized.

Ms. Mucarsel-Powell. Director Mueller, thank you so much for coming here. You're a patriot.

I want to refer you now to Volume II, page 158. You wrote that, quote, the President's efforts to influence the investigation were mostly unsuccessful, but that is largely because the persons who surrounded the President declined to carry out orders or accede to his request. Is that right?

Mr. Mueller. That is accurate. That is what we found.

Ms. Mucarsel-Powell. And you're basically referring to senior advisers who disobeyed the President's orders, like White House Counsel Don McGahn, former Trump campaign manager Corey Lewandowski. Is that right?

Mr. Mueller. Well, we have not specified the persons mentioned.

Ms. Mucarsel-Powell. Well, in page 158, White House Counsel Don McGahn, quote, did not tell the Acting Attorney General that the special counsel must be removed but was instead prepared to resign over the President's orders.

You also explained that an attempt to obstruct justice does not have to succeed to be a crime, right?

Mr. Mueller. True.

Ms. Mucarsel-Powell. Simply attempting to obstruct justice can be a crime, correct?

Mr. Mueller. Yes.

Ms. Mucarsel-Powell. So even though the President's aides refused to carry out his orders to interfere with your investigation, that is not a defense to obstruction of justice by this President, is it?

Mr. Mueller. I'm not going to speculate.

Ms. Mucarsel-Powell. So to reiterate, simply trying to obstruct justice can be a crime, correct?

Mr. Mueller. Yes.

Ms. Mucarsel-Powell. And you say that the President's efforts to influence the investigation were, quote, mostly unsuccessful. And that's because not all of his efforts were unsuccessful, right?

Mr. Mueller. Are you reading into what I -- what we have written in the report?

Ms. Dean. I was going to ask you if you could just tell me which ones you had in mind as successful when you wrote that sentence.

Mr. Mueller. I'm going to pass on that.

Ms. Mucarsel-Powell. Yeah. Director Mueller, today, we've



talked a lot about the separate acts by this President, but you also wrote in your report that, quote, the overall pattern of the President's conduct towards the investigations can shed light on the nature of the President's acts, and the inferences can be drawn about his intent, correct?

Mr. Mueller. Accurate recitation from the report.

Ms. Mucarsel-Powell. Right. And on page 158 again, I think it's important for everyone to note that the President's conduct had a significant change when he realized that it was -- the investigations were conducted to investigate his obstruction acts.

So in other words, when the American people are deciding whether the President committed obstruction of justice, they need to look at all of the President's conduct and overall pattern of behavior. Is that correct?

Mr. Mueller. I don't disagree.

Ms. Mucarsel-Powell. Thank you. Dr. Mueller -- Director Mueller -- Doctor also, I'll designate that too -- I have certainly made up my mind about whether we -- what we have reviewed today meets the elements of obstruction, including whether there was corrupt intent. And what is clear is that anyone else, including some Members of Congress, would have been charged with crimes for these acts. We would not have allowed this behavior from any of the previous 44 Presidents. We should not allow it now or for the future to protect our democracy. And, yes, we will continue to investigate because, as you clearly state

at the end of your report, no one is above the law.

I yield back my time.

Chairman Nadler. The gentlelady yields back.

The gentlelady from Texas.

Ms. Escobar. Director Mueller, you wrote in your report that you, quote, determined not to make a traditional prosecutorial judgment, end quote. Was that in part because of an opinion by the Department of Justice Office of Legal Counsel that a sitting President can't be charged with a crime?

Mr. Mueller. Yes.

Ms. Escobar. Director Mueller, at your May 29, 2019, press conference, you explained that, quote, the opinion says that the Constitution requires a process other than the criminal justice system to formally accuse a sitting President of wrongdoing, end quote. That process other than the criminal justice system for accusing a President of wrongdoing, is that impeachment?

Mr. Mueller. I'm not going to comment on that.

Ms. Escobar. In your report, you also wrote that you did not want to, quote, potentially preempt constitutional processes for addressing Presidential misconduct, end quote. For the nonlawyers in the room, what did you mean by, quote, potentially preempt constitutional processes?

Mr. Mueller. I'm not going to try to explain that.

Ms. Escobar. That actually is coming from page 1 of Volume II. In the footnote is the reference to this. What are those

constitutional processes?

Mr. Mueller. I think I heard you mention at least one.

Ms. Escobar. Impeachment, correct?

Mr. Mueller. I'm not going to comment.

Ms. Escobar. Okay. That is one of the constitutional processes listed in the report in the footnote in Volume II.

Your report documents the many ways the President sought to interfere with your investigation. And you state in your report on page 10, Volume II, that with a -- interfering with a congressional inquiry or investigation with corrupt intent can also constitute obstruction of justice.

Mr. Mueller. True.

Ms. Escobar. Well, the President has told us that he intends to fight all the subpoenas. His continued efforts to interfere with investigations of his potential misconduct certainly reinforce the importance of the process the Constitution requires to, quote, formally accuse a sitting President of wrongdoing, as you cited in the report.

And in this -- and this hearing has been very helpful to this committee as it exercises its constitutional duty to determine whether to recommend articles of impeachment against the President.

I agree with you, Director Mueller, that we all have a vital role in holding this President accountable for his actions. More than that, I believe we in Congress have a duty to demand

accountability and safeguard one of our Nation's highest principles that no one is above the law.

From everything that I have heard you say here today, it's clear that anyone else would have been prosecuted based on the evidence available in your report. It now falls on us to hold President Trump accountable. Thank you for being here.

Chairman, I yield back.

Mr. Collins. Mr. Chairman?

Chairman Nadler. The gentlelady yields back.

Mr. Collins. Just one point of personal privilege.

Chairman Nadler. Point of personal privilege.

Mr. Collins. I just want to thank the chairman. We did get in our time. After this was first developed to us, we did both get in time. Our side got our 5 minutes in.

Also, Mr. Mueller, thank you for being here, and I join the chairman in thanking you for being here.

Chairman Nadler. Thank you.

Director Mueller, we thank you for attending today's hearing.

Before we conclude, I ask everyone to please remain seated and quiet while the witness exits the room.

Without objection, all members will have 5 legislative days to submit additional written questions for the witness or additional materials for the record.

And without objection, the hearing is now adjourned.

[Whereupon, at 12:11 p.m., the committee was adjourned.]



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit B**

**THE WHITE HOUSE**

WASHINGTON

May 20, 2019

The Honorable Jerrold Nadler  
Chairman  
Committee on the Judiciary  
United States House of Representatives  
Washington, D.C. 20515

Dear Chairman Nadler:

I write in further reference to the subpoena issued by the Committee on the Judiciary of the United States House of Representatives (the “Committee”) to Donald F. McGahn II on April 22, 2019. My previous letter, dated May 7, 2019, informed you that Acting Chief of Staff to the President Mick Mulvaney had directed Mr. McGahn not to produce the White House records sought by the subpoena because they remain subject to the control of the White House and implicate significant Executive Branch confidentiality interests and executive privilege. Accordingly, I asked that the Committee direct any request for such records to the White House. The subpoena also directs Mr. McGahn to appear to testify before the Committee at 10:00 a.m. on Tuesday, May 21, 2019.

The Department of Justice (the “Department”) has advised me that Mr. McGahn is absolutely immune from compelled congressional testimony with respect to matters occurring during his service as a senior adviser to the President. *See* Memorandum for Pat A. Cipollone, Counsel to the President, from Steven A. Engel, Assistant Attorney General, Office of Legal Counsel, *Re: Testimonial Immunity Before Congress of the Former Counsel to the President* (May 20, 2019). The Department has long taken the position—across administrations of both political parties—that “the President and his immediate advisers are absolutely immune from testimonial compulsion by a Congressional committee.” *Immunity of the Former Counsel to the President from Compelled Congressional Testimony*, 31 Op. O.L.C. 191, 191 (2007) (quoting *Assertion of Executive Privilege with Respect to Clemency Decision*, 23 Op. O.L.C. 1, 4 (1999) (opinion of Attorney General Janet Reno)); *Immunity of the Counsel to the President from Compelled Congressional Testimony*, 20 Op. O.L.C. 308, 308 (1996). That immunity arises from the President’s position as head of the Executive Branch and from Mr. McGahn’s former position as a senior adviser to the President, specifically Counsel to the President.

There is no question that the position of Counsel to the President falls within the scope of the immunity. The three previous opinions cited above directly addressed the immunity of Counsel to the President: Harriet Miers was a former Counsel to President George W. Bush, Beth Nolan was the current Counsel to President Clinton, and Jack Quinn was the current Counsel to President Clinton. Accordingly, Mr. McGahn cannot be compelled to appear before the Committee because “[s]ubjecting a senior presidential advisor to the congressional subpoena power would be akin to requiring the President himself to appear before Congress on matters relating to the performance

The Honorable Jerrold Nadler

Page 2

of his constitutionally assigned executive functions.” *Assertion of Executive Privilege with Respect to Clemency Decision*, 23 Op. O.L.C. at 5. The constitutional immunity of current and former senior advisers to the President exists to protect the institution of the Presidency and, as stated by Attorney General Reno, “may not be overcome by competing congressional interests.” *Id.*

Because of this constitutional immunity, and in order to protect the prerogatives of the Office of the Presidency, the President has directed Mr. McGahn not to appear at the Committee’s scheduled hearing on Tuesday, May 21, 2019. This long-standing principle is firmly rooted in the Constitution’s separation of powers and protects the core functions of the Presidency, and we are adhering to this well-established precedent in order to ensure that future Presidents can effectively execute the responsibilities of the Office of the Presidency. I attach the legal opinion provided by the Department of Justice for the Committee’s review.

Please do not hesitate to contact me directly if you have any questions or would like to discuss this matter.

Sincerely,



Pat A. Cipollone  
Counsel to the President

cc: The Honorable Doug Collins, Ranking Member



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit C**



**U.S. Department of Justice**  
Office of Legal Counsel

Office of the Assistant Attorney General

Washington, D.C. 20530

May 20, 2019

**MEMORANDUM FOR PAT A. CIPOLLONE**  
**COUNSEL TO THE PRESIDENT**

*Re: Testimonial Immunity Before Congress of  
the Former Counsel to the President*

On April 22, 2019, the Committee on the Judiciary of the House of Representatives subpoenaed Donald F. McGahn II, the former Counsel to the President, to testify about matters described in the report of Special Counsel Robert S. Mueller, III. You have asked whether Mr. McGahn is legally required to appear.

We provide the same answer that the Department of Justice has repeatedly provided for nearly five decades: Congress may not constitutionally compel the President's senior advisers to testify about their official duties. This testimonial immunity is rooted in the constitutional separation of powers and derives from the President's independence from Congress. As Attorney General Janet Reno explained, "[s]ubjecting a senior presidential advisor to the congressional subpoena power would be akin to requiring the President himself to appear before Congress on matters relating to the performance of his constitutionally assigned executive functions." *Assertion of Executive Privilege with Respect to Clemency Decision*, 23 Op. O.L.C. 1, 5 (1999) ("Reno Opinion"). Yet Congress may no more summon the President to a congressional committee room than the President may command Members of Congress to appear at the White House. See Memorandum for Edward C. Schmults, Deputy Attorney General, from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel at 2 (July 29, 1982) ("Olson Memorandum").

Although the White House has opposed sending senior advisers to testify for almost as long as there has been an Executive Office of the President, Assistant Attorney General William Rehnquist first described the legal basis for immunity in a 1971 memorandum. See Memorandum for John D. Ehrlichman, Assistant to the President for Domestic Affairs, from William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, *Re: Power of Congressional Committee to Compel Appearance or Testimony of "White House Staff"* (Feb. 5, 1971) ("Rehnquist Memorandum"). The Rehnquist Memorandum has been consistently reaffirmed by administrations of both political parties, most recently during the Obama Administration. See, e.g., *Immunity of the Assistant to the President and Director of the Office of Political Strategy and Outreach from Congressional Subpoena*, 38 Op. O.L.C. \_\_, \*1 & n.1 (July 15, 2014) ("*Immunity of the Assistant to the President*").

We believe that these established principles apply to bar the Committee from compelling Mr. McGahn to testify. The Counsel to the President clearly qualifies as a senior adviser entitled to testimonial immunity. Attorney General Reno reached that conclusion in her 1999 opinion, and this Office has made the same determination on at least three other occasions. We have also recognized that the immunity continues to apply after the Counsel leaves the White House. *See Immunity of the Former Counsel to the President from Compelled Congressional Testimony*, 31 Op. O.L.C. 191, 192 (2007) (“*Immunity of the Former Counsel*”).

The Chairman of the Committee has suggested that the justification for Mr. McGahn’s testimonial immunity is undermined by the President’s decision not to assert executive privilege over the redacted version of the Special Counsel’s report that the Attorney General released last month. *See, e.g.*, Letter for Donald F. McGahn II, from Jerrold Nadler, Chairman, Committee on the Judiciary, U.S. House of Representatives at 1 (May 17, 2019) (“Nadler Letter”). But the question whether an adviser need comply with a subpoena purporting to require an appearance is different from the question whether the adviser’s testimony would itself address privileged matters. Therefore, the public disclosure of the Special Counsel’s report does not have any legal bearing upon the force of the congressional subpoena. For these reasons, and consistent with nearly 50 years of executive branch precedent, we conclude that Mr. McGahn is not legally required to appear and testify before the Committee.

## I.

Since the 1970s, this Office has consistently advised that “the President and his immediate advisers are absolutely immune from testimonial compulsion by a Congressional committee” on matters related to their official duties. Memorandum for All Heads of Offices, Divisions, Bureaus and Boards of the Department of Justice, from John M. Harmon, Acting Assistant Attorney General, Office of Legal Counsel, *Re: Executive Privilege* at 5 (May 23, 1977) (“Harmon Memorandum”); *see also* Rehnquist Memorandum at 7 (“The President and his immediate advisers—that is, those who customarily meet with the President on a regular or frequent basis—should be deemed absolutely immune from testimonial compulsion by a congressional committee.”). Indeed, this Office has endorsed that legal principle on more than a dozen occasions, over the course of the last eight presidential administrations.<sup>1</sup>

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<sup>1</sup> *See Immunity of the Assistant to the President*, 38 Op. O.L.C. at \*1; Letter for Fred F. Fielding, Counsel to the President, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel at 1–2 (Aug. 1, 2007) (“Bradbury Letter”); *Immunity of the Former Counsel*, 31 Op. O.L.C. at 191; Reno Opinion, 23 Op. O.L.C. at 4; *Immunity of the Counsel to the President from Compelled Congressional Testimony*, 20 Op. O.L.C. 308, 308 (1996) (“*Immunity of the Counsel to the President*”); Letter for Jack Brooks, Chairman, Committee on the Judiciary, U.S. House of Representatives, from Nicholas E. Calio, Assistant to the President for Legislative Affairs at 1 (June 16, 1992) (“Calio Letter”); Olson Memorandum at 2; Memorandum for Rudolph W. Giuliani, Associate Attorney General, from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel, *Re: Congressional Demand for Deposition of Counsel to the President Fred F. Fielding* at 2 (July 23, 1982) (“*Congressional Demand for Deposition of Counsel*”); Memorandum for Fred F. Fielding, Counsel to the President, from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel, *Re: Congressional Testimony by Presidential Assistants* at 1 (Apr. 14, 1981); Memorandum for Margaret McKenna, Deputy Counsel to the President, from John M. Harmon, Assistant Attorney General, Office of Legal Counsel, *Re: Dual-Purpose Presidential Advisers* at 5 (Aug. 11, 1977); Harmon Memorandum at 5; Letter to Phillip E. Areeda, Counsel to the President,

This testimonial immunity is distinct from, and broader than, executive privilege. Like executive privilege, the immunity protects confidentiality within the Executive Branch and the candid advice that the Supreme Court has acknowledged is essential to presidential decision-making. *See United States v. Nixon*, 418 U.S. 683, 705 (1974) (“Human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decisionmaking process.”). But the immunity extends beyond answers to particular questions, precluding Congress from compelling even the appearance of a senior presidential adviser—as a function of the independence and autonomy of the President himself. In this regard, the President’s immediate advisers are constitutionally distinct from the heads of executive departments and agencies, whose offices are created by acts of Congress, whose appointments require the Senate’s advice and consent, and whose responsibilities entail the administration of federal statutes. Those officers can and do testify before Congress. The President’s immediate advisers, however, exercise no statutory authority and instead act solely to advise and assist the President. Their independence from Congress reflects that of the President.

### A.

The President stands at the head of a co-equal branch of government. Yet allowing Congress to subpoena the President to appear and testify would “promote a perception that the President is subordinate to Congress, contrary to the Constitution’s separation of governmental powers into equal and coordinate branches.” *Immunity of the Assistant to the President*, 38 Op. O.L.C. at \*3. As Assistant Attorney General Theodore Olson explained in 1982: “The President is a separate branch of government. He may not compel congressmen to appear before him. As a matter of separation of powers, Congress may not compel him to appear before it.” Olson Memorandum at 2. The President’s immediate advisers are an extension of the President and are likewise entitled to absolute immunity from compelled congressional testimony.

In 2014, our most recent opinion on the topic described the bases for this immunity in detail. “For the President’s absolute immunity to be fully meaningful,” we explained, “and for these separation of powers principles to be adequately protected, the President’s immediate advisers must likewise have absolute immunity from congressional compulsion to testify about matters that occur during the course of discharging their official duties.” *Immunity of the Assistant to the President*, 38 Op. O.L.C. at \*2. The demands of the office require the President to rely on senior advisers who serve “as the President’s alter ego, assisting him on a daily basis in the formulation of executive policy and resolution of matters affecting the military, foreign affairs, and national security and other aspects of his discharge of his constitutional responsibilities.” *Id.* at \*3 (quoting *Reno Opinion*, 23 Op. O.L.C. at 5); *see also In re Sealed*

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from Antonin Scalia, Assistant Attorney General, Office of Legal Counsel (Sept. 25, 1974) (enclosing a memorandum, hereinafter “Scalia Memorandum”); Memorandum for John W. Dean III, Counsel to the President, from Roger C. Cramton, Assistant Attorney General, Office of Legal Counsel, *Re: Availability of Executive Privilege Where Congressional Committee Seeks Testimony of Former White House Official on Advice Given President on Official Matters* at 6 (Dec. 21, 1972) (“Cramton Memorandum”); Memorandum for John W. Dean III, Counsel to the President, from Ralph E. Erickson, Assistant Attorney General, Office of Legal Counsel, *Re: Appearance of Presidential Assistant Peter M. Flanigan Before a Congressional Committee* at 1 (Mar. 15, 1972) (“Erickson Memorandum”); Rehnquist Memorandum at 7.

*Case*, 121 F.3d 729, 750 (D.C. Cir. 1997) (“The President himself must make decisions relying substantially, if not entirely, on the information and analysis supplied by advisers.”).

There are dozens of congressional committee and subcommittees with the authority to conduct hearings and subpoena witnesses. Recognizing a congressional authority to compel the President’s immediate advisers to appear and testify at the times and places of their choosing would interfere directly with the President’s ability to faithfully discharge his responsibilities. It would allow congressional committees to “wield their compulsory power to attempt to supervise the President’s actions, or to harass those advisers in an effort to influence their conduct, retaliate for actions the committee disliked, or embarrass and weaken the President for partisan gain.” *Immunity of the Assistant to the President*, 38 Op. O.L.C. at \*3. And in the case of the President’s current advisers, preparing for such examinations would force them to divert time and attention from their duties to the President at the whim of congressional committees. This “would risk significant congressional encroachment on, and interference with, the President’s prerogatives and his ability to discharge his duties with the advice and assistance of his closest advisers,” ultimately subordinating senior presidential advisers to Congress rather than the President. *Id.*; see also *Loving v. United States*, 517 U.S. 748, 757 (1996) (“Even when a branch does not arrogate power to itself . . . the separation-of-powers doctrine requires that a branch not impair another in the performance of its constitutional duties.”).

The immunity of senior presidential advisers also protects the Executive Branch’s strong interests in confidentiality as well as the President’s ability to obtain sound and candid advice. As the Supreme Court has recognized, “[a] President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately.” *Nixon*, 418 U.S. at 708. While a senior presidential adviser, like other executive officials, could rely on executive privilege to decline to answer specific questions at a hearing, the privilege is insufficient to ameliorate several threats that compelled testimony poses to the independence and candor of executive councils.

First, compelled congressional testimony “create[s] an inherent and substantial risk of inadvertent or coerced disclosure of confidential information,” despite the availability of claims of executive privilege with respect to the specific questions asked during such testimony. *Immunity of the Assistant to the President*, 38 Op. O.L.C. at \*4. As we explained in 2014, senior presidential advisers

could be asked, under the express or implied threat of contempt of Congress, a wide range of unanticipated and hostile questions about highly sensitive deliberations and communications. In the heat of the moment, without the opportunity for careful reflection, the adviser might have difficulty confining his remarks to those that do not reveal such sensitive information. Or the adviser could be reluctant to repeatedly invoke executive privilege, even though validly applicable, for fear of the congressional and media condemnation she or the President might endure.

*Id.*; see also *Congressional Demand for Deposition of Counsel*, *supra* note 1, at 2 (“A witness before a Congressional committee may be asked—under threat of contempt—a wide range of unanticipated questions about highly sensitive deliberations and thought processes. He therefore

may be unable to confine his remarks only to those which do not impair the deliberative process.”).

Second, even “[t]he prospect of compelled interrogation by a potentially hostile congressional committee about confidential communications with the President or among the President’s immediate staff could chill presidential advisers from providing unpopular advice or from fully examining an issue with the President or others.” *Immunity of the Assistant to the President*, 38 Op. O.L.C. at\*4. This is true whether or not the President might ultimately assert executive privilege over the testimony in question, given the adviser’s uncertainty over whether a particular matter will become the subject of future congressional inquiry and whether the President would choose to incur the political costs associated with invoking the privilege.

Finally, given the frequency with which the testimony of a senior presidential adviser—whose sole and daily responsibility is to advise and assist the President—would fall within the scope of executive privilege, compelling the adviser’s appearance is not likely to promote any valid legislative interests. Coercing senior presidential advisers into situations where they must repeatedly decline to provide answers, citing executive privilege, would be inefficient and contrary to good-faith governance. The President’s immediate advisers, if compelled to testify, are unlikely to answer many of the Members’ questions, suggesting that the hearing itself will not serve any legitimate purpose for the Committee.

## B.

The Executive Branch’s position on testimonial immunity reflects historical practices dating back nearly to the 1939 establishment of the Executive Office of the President. As Assistant Attorney General Antonin Scalia explained in a 1974 memorandum, “at least since the Truman Administration,” presidential advisers “have appeared before congressional committees only where the inquiry related to their own private affairs or where they had received Presidential permission.” Scalia Memorandum, *supra* note 1, at 6. Although Presidents have occasionally permitted such testimony, the long-standing policy has been to decline invitations for voluntary appearances and to resist congressional subpoenas for involuntary ones.

In surveying the history through 1971, Assistant Attorney General Rehnquist described the earliest application of the policy to be inconclusive and at times inconsistent. *See* Rehnquist Memorandum at 4–6. But even when senior presidential advisers did appear, those appearances were frequently accompanied by a claim of legal privilege not to do so. Assistant Attorney General Rehnquist thus described the claim as an absolute testimonial immunity for the President’s immediate advisers, *see id.* at 7, and this Office has reaffirmed and expanded upon that conclusion in the decades since. The following examples, while not exhaustive, demonstrate the strong historical foundation for the Executive Branch’s position that Congress may not compel the President’s senior advisers to appear and testify.

In 1944, during the Administration of Franklin D. Roosevelt, a subcommittee of the Senate Committee on Agriculture and Forestry subpoenaed Jonathan Daniels, an Administrative Assistant to President Roosevelt, to testify about his reported attempts to compel the resignation of the Rural Electrification Administrator. *See Administration of the Rural Electrification Act: Hearing on S. 197 Before a Subcomm. of the S. Comm. on Agric. and Forestry*, 78th Cong., pt. 3,

at 611–28, 629 (1944). Mr. Daniels appeared at the hearing but advised that he could not answer questions that would concern his confidential relationship with the President. *Id.* After the hearing ended with the subcommittee threatening contempt, Mr. Daniels wrote to the subcommittee and reiterated his belief that the subcommittee could not compel his testimony. *See id.* at 740. However, he stated that the President had determined that his testimony would not be contrary to the public interest and that he therefore was willing to appear in the future. *See id.*; *see also id.* at 695–740. *The New York Times* reported that “[w]ith Daniels’ agreement to testify disappeared the possibility of using his previous defiance as the first test of the division between executive and legislative power before the Senate.” *Daniels to Answer Senators’ Queries: President Agrees*, N.Y. Times, Mar. 5, 1944, at 1.

The first outright refusal of a presidential adviser to appear apparently occurred during the Truman Administration, in 1948, when a special subcommittee of the House Committee on Education and Labor twice subpoenaed John R. Steelman, an Assistant to the President, to testify about his communications with President Truman regarding administration of the Taft-Hartley Act during a strike. *See Investigation of GSI Strike: Hearing Before a Special Subcomm. of the H. Comm. on Educ. and Labor*, 80th Cong. 347–53 (1948). Mr. Steelman declined to comply and returned the subpoenas with a letter stating: “[I]n each instance the President directed me, in view of my duties as his Assistant, not to appear before your subcommittee.” H.R. Rep. No. 80-1595, at 3 (1948).

During the Eisenhower Administration, in 1955, a subcommittee of the Senate Committee on the Judiciary invited the President’s Chief of Staff, Sherman Adams, to testify about a contract between the Atomic Energy Commission and two power companies. He declined, citing in part his “official and confidential relationship with the President.” *Power Policy, Dixon-Yates Contract: Hearing Before the Subcomm. on Antitrust and Monopoly of the S. Comm. on the Judiciary*, 84th Cong., pt. 2, at 675–76, 779 (1955). Later, in 1958, Mr. Adams testified, with President Eisenhower’s approval, before a House subcommittee concerning allegations of impropriety relating to his relationship with a New England industrialist. *Investigation of Regulatory Commissions and Agencies: Hearing Before a Subcomm. of the H. Comm. on Interstate and Foreign Commerce*, 85th Cong., pt. 10, at 3712–40 (1958).

During the Administration of President Lyndon B. Johnson, in 1968, the Senate Committee on the Judiciary requested the testimony of Associate Special Counsel to the President W. DeVier Pierson to testify concerning the nomination of Associate Justice Abe Fortas to be Chief Justice of the United States. The inquiry concerned whether Justice Fortas had inappropriately participated in developing certain legislation. Mr. Pierson responded that “[i]t has been firmly established, as a matter of principle and precedents, that members of the President’s immediate staff shall not appear before a Congressional committee to testify with respect to the performance of their duties on behalf of the President.” *Nominations of Abe Fortas and Homer Thornberry: Hearing Before the S. Comm. on the Judiciary*, 90th Cong., pt. 2, at 1348 (1968). He continued: “This limitation, which has been recognized by the Congress as well as the Executive, is fundamental to our system of government. I must, therefore, respectfully decline the invitation to testify in these hearings.” *Id.*

In 1972, during the Nixon Administration, the Senate Committee on the Judiciary invited Peter M. Flanigan, an Assistant to the President, to testify. This Office advised that Mr. Flanigan

occupied “a close and confidential relationship with the President and share[d] the President’s immunity from congressional process.” Erickson Memorandum, *supra* note 1, at 1. Our disposition was clear: “[I]t has been firmly established that members of the President’s immediate staff may not appear before a congressional committee to testify with respect to the performance of their duties.” *Id.*<sup>2</sup>

In 1979, during the Carter Administration, Special Assistant to the President Sarah Weddington was invited to testify before the Senate Human Resources Committee as part of a hearing on “Women in the Coming Decade.” At the instruction of the Counsel to President, she declined to appear, explaining that “it is White House policy for personal aides to the President to decline invitations to testify before Congressional committees.” Letter for Harrison A. Williams, U.S. Senate, from Sarah Weddington, Special Assistant to the President at 1 (Jan. 31, 1979) (“Weddington Letter”). She offered, however, to meet informally with committee members or staff to discuss related programs and proposals. *Id.* at 2.

In 1980, the Subcommittee on Investigations of the House Committee on Armed Services requested the testimony of Deputy Assistant to the President for National Security Affairs David Aaron concerning leaks to *The Washington Post*. President Carter directed Mr. Aaron not to appear. The Counsel to the President, Lloyd N. Cutler, explained that “Congress has always respected the privilege of the President to decline requests that the President himself or his immediate White House advisors appear to testify before Congressional committees,” instead provided a sworn affidavit by Mr. Aaron denying the allegations, and offered to make Mr. Aaron available for an interview or deposition under oath. Letter for Samuel S. Stratton, Chairman, Subcommittee on Investigation of the Committee on Armed Services, U.S. House of Representatives, from Lloyd N. Cutler, Counsel to the President at 1–2 (Sept. 30, 1980).

In 1982, during the Reagan Administration, the Senate Labor and Human Resources Committee sought the testimony of Counsel to the President Fred F. Fielding concerning allegations of corruption against Secretary of Labor Raymond Donovan. Mr. Fielding declined to appear and testify. *See* Olson Memorandum at 1–4 (explaining the legal basis for that decision). Deputy Attorney General Edward C. Schmults notified the Committee that, “[a]s an institutional matter, the President cannot permit his Counsel to provide sworn testimony to the Legislative Branch regarding the performance of his duties,” but offered to arrange for written responses to a reasonable number of written inquiries. Letter for Orrin G. Hatch, Chairman, Committee on Labor and Human Resources, U.S. Senate, from Edward C. Schmults, Deputy Attorney General at 2–3 (Apr. 19, 1983) (“Schmults Letter”).

In 1992, during the George H.W. Bush Administration, the House Committee on the Judiciary requested that C. Boyden Gray, Counsel to the President, and Nicholas Rostow,

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<sup>2</sup> In connection with the Watergate investigations, President Nixon reached an agreement with the Senate’s Watergate Select Committee to authorize current and former White House officials to appear voluntarily and under oath before the committee in closed session. *See* Remarks Announcing Procedures and Developments in Connection With the Watergate Investigations (Apr. 17, 1973), *Pub. Papers of Pres. Richard Nixon* 298, 298–99 (1973). President Nixon later determined that he would not claim executive privilege over the subject matters of the testimony and would allow the witnesses to testify in open hearings. *See* Statements About the Watergate Investigations (May 22, 1973), *Pub. Papers of Pres. Richard Nixon* at 547, 554 (1973). He therefore waived the testimonial immunity to authorize those appearances.



Special Assistant to the President and a Senior Director for Legal Affairs at the National Security Council, testify concerning Bush Administration policies towards Iraq prior to the first Gulf War. The White House declined, citing “the longstanding practice of the Executive Branch to decline requests for testimony by members of the President’s personal staff.” Calio Letter, *supra* note 1, at 1.

In 1999, President Clinton directed Counsel to the President Beth Nolan not to appear in response to a subpoena from the House Committee on Government Reform and Oversight concerning a clemency decision. President Clinton relied on an opinion from Attorney General Reno that concluded that “the Counsel serves as an immediate adviser to the President and is therefore immune from compelled congressional testimony” on matters related to the performance of official duties. Reno Opinion, 23 Op. O.L.C. at 4.

In 2007, during the George W. Bush Administration, the House Committee on the Judiciary subpoenaed former Counsel to the President Harriet Miers to testify about the Department of Justice’s decision to request the resignation of certain United States Attorneys. President Bush directed Ms. Miers not to testify after this Office concluded that she was “immune from compelled congressional testimony about matters . . . that arose during her tenure as Counsel to the President and that relate to her official duties in that capacity.” *Immunity of the Former Counsel*, 31 Op. O.L.C. at 193.

Also in 2007, the Senate Committee on the Judiciary subpoenaed the testimony of Karl Rove, the Deputy White House Chief of Staff, on the same subject. This Office confirmed that Mr. Rove was “immune from compelled congressional testimony about matters (such as the U.S. Attorney resignations) that arose during his tenure as an immediate presidential adviser and that relate to his official duties in that capacity.” Bradbury Letter, *supra* note 1, at 1–2. In 2008, a subcommittee of the House Committee on the Judiciary also subpoenaed Mr. Rove, and he was again directed not to testify. *See* Letter for Robert D. Luskin, Patton Boggs LLP, from Fred F. Fielding, Counsel to the President at 1 (July 9, 2008).

In 2014, during the Obama Administration, the House Committee on Oversight and Government Reform issued a subpoena to David Simas to testify about matters related to his official responsibilities as Assistant to the President and Director of the Office of Political Strategy and Outreach. In particular, the committee requested testimony regarding “the role and function of the White House Office of Political Strategy and Outreach” and the question “whether the White House [was] taking adequate steps to ensure that political activity by Administration officials complies with relevant statutes, including the Hatch Act.” *Immunity of the Assistant to the President*, 38 Op. O.L.C. at \*1 (internal quotation marks omitted). This Office concluded that Mr. Simas was “immune from compulsion to testify before the [c]ommittee on these matters,” *id.*, and he declined to testify.

The foregoing historical record demonstrates that the immunity of senior presidential advisers from congressional testimony is long-standing and has been repeatedly asserted against the requests of Congress. These examples do not indicate that senior presidential advisers have always declined to testify before Congress. The practice of asserting testimonial immunity—just like the practice of asserting executive privilege—has long reflected the “spirit of dynamic compromise” that reflects the “efficient and effective functioning” of the political branches of

government. *United States v. Am. Tel. & Tel. Co.*, 567 F.2d 121, 127 (D.C. Cir. 1977). Presidents have occasionally made senior advisers available to accommodate congressional requests, even while defending their legal authority to decline such requests. But these accommodations between the political branches do not compromise the underlying immunity of the President or his senior presidential advisers from compelled congressional testimony. Nor do they nullify the many instances where Presidents have successfully asserted immunity and affirmatively directed their immediate aides not to testify before Congress.

### C.

While the Executive Branch has asserted for 75 years that senior presidential advisers may decline to testify before Congress, and has formally asserted an immunity for nearly 50 years, neither the Supreme Court nor any court of appeals has specifically addressed the question. This is because disputes over congressional demands for information from the Executive Branch are inherently political, and the historical practice has been to resolve such questions in the political arena. When such conflicts have arisen, Congress has either acceded to the President's claims of immunity or the Executive Branch has accommodated the congressional interest in some fashion. Only one district court has ever addressed the testimonial immunity of the President's senior advisers, and that decision did not come until 2008. *See Comm. on the Judiciary, U.S. House of Representatives v. Miers*, 558 F. Supp. 2d 53 (D.D.C. 2008). Although the district court held that presidential advisers were not entitled to absolute immunity from compelled congressional testimony, the court of appeals stayed that decision pending appeal, and the parties settled without any appellate decision on the merits.

Nonetheless, this Office has recognized that the Executive Branch's long-standing position is consistent with related Supreme Court precedent. *See Immunity of the Assistant to the President*, 38 Op. O.L.C. at \*5. In *Gravel v. United States*, 408 U.S. 606 (1972), the Court held that legislative aides share in the constitutional immunity enjoyed by Members of Congress under the Speech or Debate Clause. *Id.* at 616–17. The Court reasoned that the Clause “was designed to assure a co-equal branch of the government wide freedom of speech, debate, and deliberation without intimidation or threats from the Executive Branch,” and “protect[ion] . . . against prosecutions that directly impinge upon or threaten the legislative process.” *Id.* at 616. Because “it is literally impossible . . . for Members of Congress to perform their legislative tasks without the help of aides and assistants,” the Court recognized that such aides “must be treated as the [Members'] alter egos.” *Id.* at 616–17. For purposes of immunity, the Court concluded, Members of Congress and their aides should be “treated as one.” *Id.* at 616 (internal quotation marks omitted). The same logic applies with respect to the President and his senior advisers. The failure to recognize the extension of the President's immunity from compelled congressional testimony to senior advisers would call into question the well-established extension of derivative immunity to congressional staffers.

It is true that in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), the Court declined to extend *Gravel*'s alter-ego reasoning to a civil suit for damages against senior presidential advisers, and instead concluded that such advisers are entitled only to qualified immunity in those civil actions. *Id.* at 810–11, 813–15. *Harlow* thus distinguished the President's immediate advisers from the President himself, whom the Court held (in another decision issued the same day) to be absolutely immune from civil suits based on official acts. *See Nixon v. Fitzgerald*, 457 U.S. 731,

749 (1982). Yet we have previously declined to extend *Harlow* to the context of testimonial immunity because the prospect of compelled congressional testimony raises separation of powers concerns that are not present in a civil damages lawsuit brought by a private party. *Immunity of the Assistant to the President*, 38 Op. O.L.C. at \*5–7. Compelled congressional testimony “threatens to subject presidential advisers to coercion and harassment, create a heightened impression of presidential subordination to Congress, and cause public disclosure of confidential presidential communications in a way that the careful development of evidence through a judicially monitored [proceeding] does not.” *Id.* at \*6. In a private lawsuit, the court “acts as a disinterested arbiter of a private dispute, not as a party in interest to the very lawsuit it adjudicates,” and it “is charged with impartially administering procedural rules designed to protect witnesses from irrelevant, argumentative, harassing, cumulative, privileged, and other problematic questions.” *Id.* By contrast, congressional hearings involving the President’s immediate advisers contain none of those assurances, and they threaten the President’s autonomy and ability to receive sound and candid advice in a way that private civil damages suits do not. *Cf.* Archibald Cox, *Executive Privilege*, 122 U. Pa. L. Rev. 1383, 1429 (1974) (stating that as compared to a civil action, “[t]he need to protect aides and subordinates from reprisals on Capitol Hill and in the media of public debate is a thousand-fold greater in the case of congressional hearings, which are often the preserves of individual Senators and Congressmen not all of whom are invariably characterized by judicious self-restraint”).

We recognize that in *Miers*, a federal district court read *Harlow* to imply that senior presidential advisers do not enjoy absolute immunity from congressionally compelled testimony. *See Miers*, 558 F. Supp. 2d at 100–03. But we believe that the court did not adequately consider the different and heightened separation of powers concerns bearing upon the testimony of the President’s immediate advisers before Congress. Moreover, the district court’s decision was stayed pending appeal. *See Comm. on the Judiciary of the U.S. House of Representatives v. Miers*, 542 F.3d 909, 910–11 (D.C. Cir. 2008) (per curiam). The case settled and the appeal was dismissed before any further action by the court of appeals. *Comm. on the Judiciary of the U.S. House of Representatives v. Miers*, No. 08-5357, 2009 WL 3568649, at \*1 (D.C. Cir. Oct. 14, 2009). For the reasons set forth above, and in greater detail in our 2014 opinion, *Immunity of the Assistant to the President*, 38 Op. O.L.C. at \*5–9, we respectfully disagree with the district court’s conclusion in *Miers* and adhere to this Office’s long-established position that the President’s immediate advisers are absolutely immune from compelled congressional testimony.

## II.

Having reaffirmed the existence of the testimonial immunity of the President’s immediate advisers, we now consider its application to Mr. McGahn, the former Counsel to the President. Plainly, the Counsel to the President qualifies as an immediate adviser to the President. As Attorney General Reno recognized, “the Counsel serves as an immediate adviser to the President and is therefore immune from compelled congressional testimony.” Reno Opinion, 23 Op. O.L.C. at 4. Indeed, we have recognized the Counsel’s immunity from congressional testimony on multiple occasions. *See, e.g., Immunity of the Former Counsel*, 31 Op. O.L.C. at 192 (“[T]he Counsel to the President ‘serves as an immediate adviser to the President and is therefore immune from compelled congressional testimony.’” (quoting Reno Opinion, 23 Op. O.L.C. at 4)); *Immunity of the Counsel to the President*, 20 Op. O.L.C. at 309 (“There is no question that the Counsel to the President falls within Assistant Attorney General Rehnquist’s description of

the type of Presidential advisers who are immune from testimonial compulsion.”); *Congressional Demand for Deposition of Counsel*, supra note 1, at 2 (“I believe the Counsel to the President possesses an absolute privilege not to testify with regard to any matters relating to his official duties as legal adviser to the President.”).

In addition, we have recognized that testimonial immunity continues after the tenure of a particular Counsel to the President. As we explained in 2007, “[s]eparation of powers principles dictate that former presidents and former senior presidential advisers remain immune from compelled congressional testimony about official matters that occurred during their time as President or senior presidential advisers.” *Immunity of the Former Counsel*, 31 Op. O.L.C. at 192–93. The Supreme Court has explicitly recognized this principle in the context of executive privilege. The privilege must outlast the tenure of a particular President because, absent a guarantee of lasting confidentiality, “a President could not expect to receive the full and frank submissions of facts and opinions upon which effective discharge of his duties depends.” *Nixon v. Adm’r of Gen. Servs.*, 433 U.S. 425, 449 (1977) (adopting the view of the Solicitor General); see also *United States v. Johnson*, 383 U.S. 169 (1966) (applying the Speech or Debate Clause to a former Member of Congress).

In concluding that the former Counsel to the President retained her testimonial immunity, we relied upon the actions of former President Truman, who explained his own refusal to appear and testify before the House Committee on Un-American Activities in the following terms: “[I]f the doctrine of separation of powers and the independence of the Presidency is to have any validity at all, it must be equally applicable to a President after his term of office has expired when he is sought to be examined with respect to any acts occurring while he is President.” *Immunity of the Former Counsel*, 31 Op. O.L.C. at 193 (quoting *Texts of Truman Letter and Velde Reply*, N.Y. Times, Nov. 13, 1953, at 14 (reprinting Nov. 12, 1953 letter by President Truman)). It is “just as important to the independence of the Executive that the actions of the President should not be subjected to the questioning by the Congress after he has completed his term of office as that his actions should not be questioned while he is serving as President.” *Id.* (quoting *Text of Address by Truman Explaining to Nation His Actions in the White Case*, N.Y. Times, Nov. 17, 1953, at 26). Because the immunity of senior presidential advisers derives from the immunity of the President, this same logic extends to them as well.

Our 2007 conclusion in *Immunity of the Former Counsel* was consistent with the analysis of the immunity interests of former officials during the George H.W. Bush and Nixon Administrations. See Letter for Arthur B. Culvahouse, O’Melveny & Myers, from C. Boyden Gray, Counsel to the President at 1 (June 17, 1992) (“[I]t is long-standing White House policy not to assent to formal testimony to Congressional committees by former White House officials about matters occurring during their White House service.”). It is true that the President does not have the same need for the daily advice and assistance of his former advisers, as with his current advisers, yet the confidentiality interests associated with the advisers’ former role remain just as strong. See Cramton Memorandum, supra note 1, at 5–6 (“If advice from a staff member were protected from congressional and public scrutiny only for so long as the staff member remained employed in the White House, the protection would be significantly reduced. It would only be a question of time when staff turnovers or a change in administration would remove the shield.”).

Even more significantly, the risk to the separation of powers and to the President's autonomy posed by a former adviser's testimony on official matters continues after the conclusion of that adviser's tenure. *See id.* at 6 (“[T]he same considerations that were persuasive to former President Truman would apply to justify a refusal to appear by such a former staff member, if the scope of his testimony is to be limited to his activities while serving in that capacity.”). Accordingly, consistent with our prior precedents, we find no material distinction between the compelled congressional testimony of current and former senior advisers to the President. Mr. McGahn's departure as Counsel to the President does not alter his immunity from compelled congressional testimony on matters related to his service to the President.

### III.

In this instance, the Committee seeks to question Mr. McGahn concerning matters addressed in the report of Special Counsel Robert S. Mueller, III, on the Investigation into Russian Interference in the 2016 Presidential Election. The Chairman of the Committee has suggested that the White House's voluntary cooperation with this investigation and the President's decision not to assert executive privilege over the Special Counsel's report may undermine any claim that Mr. McGahn is immune from compelled testimony. Nadler Letter at 1. However, the concept of immunity is distinct from, and broader than, the question whether executive privilege would protect a witness's response to any particular question. *See* Rehnquist Memorandum at 4 (recognizing the “distinction between a claim of absolute immunity from even being sworn as a witness, and a right to claim privilege in answer certain questions in the course of one's testimony as a witness”).<sup>3</sup> The President does not waive an adviser's immunity from compelled congressional testimony by authorizing disclosure of any particular information. To the contrary, Presidents have frequently authorized aides to share information as an accommodation to Congress, notwithstanding claims of immunity.

The immunity from compelled congressional testimony implicates fundamental separation of powers principles that are separate from the confidentiality of specific information. *See supra* Part I.A. The constitutional interest in protecting the autonomy and independence of the Presidency remains the same no matter whether the compelled testimony from a presidential adviser would implicate public or potentially privileged matters. The President does not waive his own immunity from compelled congressional testimony by making public statements on a given subject. It follows then that the derivative immunity of senior presidential advisers is not waived either.

Were the rule otherwise, Presidents could not offer partial accommodations to Congress without waiving all privileges or immunities bearing upon the subject. Such a rule would severely hinder the “spirit of dynamic compromise” and “implicit constitutional mandate to seek optimal accommodation” that currently facilitates resolution of inter-branch disputes over information. *Am. Tel. & Tel. Co.*, 567 F.2d at 127. And such a rule would stand in marked

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<sup>3</sup> The Reno Opinion described the testimonial immunity as “a separate legal basis that would support a claim of executive privilege for the entirety of the Counsel's testimony, thereby eliminating any need for her to appear at the hearing.” 23 Op. O.L.C. at 4. We think that the Rehnquist Memorandum's distinction between an immunity and a privilege reflects the more precise formulation, but the distinction appears to be merely a semantic one.

contrast to many instances of historical practice in which senior advisers declined to testify before Congress, but instead offered accommodations through informal meetings or written responses. *See, e.g.,* Schmults Letter at 2–3; Weddington Letter at 1–2. Yet no one has viewed such accommodations, or the testimony of other executive advisers on similar subjects, to constitute a general waiver of immunity.

The Chairman’s suggestion that Mr. McGahn can no longer claim immunity appears to be based upon the assumption that the President waived executive privilege by authorizing Mr. McGahn and his senior aides to cooperate with the Special Counsel’s investigation. But the question of privilege is distinct from the issue of immunity. And in any event, the premise of the Committee’s position is incorrect. The sharing of information between one arm of the Executive Branch and another does not compromise the President’s interest in confidentiality. Indeed, in *Nixon v. Administrator of General Services*, the Supreme Court rejected a separation of powers objection to the disclosure of presumptively confidential information because “[t]he Executive Branch remains in full control of the Presidential materials, and . . . the materials can be released only when release is not barred by some applicable privilege inherent in that branch.” 433 U.S. at 444. Information that was shared with the Special Counsel was shared *within* the Executive Branch. Such voluntary sharing does not waive confidentiality or the underlying privilege.

This conclusion is consistent with past assertions of executive privilege. In *Assertion of Executive Privilege Concerning the Special Counsel’s Interviews of the Vice President and Senior White House Staff*, 32 Op. O.L.C. 7 (2008), Attorney General Michael Mukasey advised that the President could assert executive privilege against Congress over memoranda recording interviews of White House witnesses with Department of Justice investigators. *Id.* at 9–13. As he explained, “[w]ere future presidents, vice presidents or White House staff to perceive that such voluntary cooperation would create records that would likely be made available to Congress (and then possibly disclosed publicly outside of judicial proceedings such as a trial), there would be an unacceptable risk that such knowledge could adversely impact their willingness to cooperate fully and candidly in a voluntary interview.” *Id.* at 11. Implicit in that explanation was the understanding that the White House’s voluntary cooperation with the Department’s investigation did not constitute a waiver of privilege against third parties outside the Executive Branch. So, too, the White House’s voluntary cooperation with the Special Counsel’s investigation did not effect a waiver of privilege, much less a waiver of testimonial immunity.

In contrast with the White House’s cooperation with the Special Counsel, the Attorney General’s public release of a redacted version of the Special Counsel’s report (with the President’s consent) does extinguish the Executive Branch’s confidentiality interests in the precise information that has already been revealed. But, as the D.C. Circuit has held, the “release of a document only waives [executive] privileges for the document or information specifically released, and not for related materials.” *In re Sealed Case*, 121 F.3d at 741; *see id.* (“[An] all-or-nothing approach has not been adopted with regard to executive privileges generally, or to the deliberative process privilege in particular.”). As Assistant Attorney General Scalia explained, the purposes underlying executive privilege “would be jeopardized if harmful information had to be disclosed merely because the President permitted the release of related information that could be revealed safely.” Scalia Memorandum, *supra* note 1, at 6–7. Such a result “would have the effect of requiring the concealment of much information which would be released, merely because it was connected with sensitive information.” *Id.* at 7.

Thus, the public disclosure of particular information does not waive the Executive Branch's confidentiality interests over the subject matters involved in the prior disclosure. *See, e.g., Assertion of Executive Privilege Concerning the Dismissal and Replacement of U.S. Attorneys*, 31 Op. O.L.C. 1, 8 (2007) (opinion of Acting Attorney General Paul Clement) ("The Department[ of Justice]'s accommodation with respect to some White House-Department communications does not constitute a waiver and does not preclude the President from asserting executive privilege with respect to White House materials or testimony concerning such communications."). Consequently, the public disclosure of the Special Counsel's report did not constitute a general waiver concerning Mr. McGahn's communications with the President on those subjects or on any other subjects. And in any event, as discussed above, the disclosure's impact on executive privilege does not ultimately bear on Mr. McGahn's underlying immunity from compelled testimony.

#### IV.

Because Congress may not constitutionally compel Mr. McGahn to testify about his official duties, the President may lawfully direct him not to appear in response to the House Judiciary Committee's subpoena. Should the President provide that direction, Mr. McGahn may not constitutionally be penalized, civilly or criminally, for following it.

The Department of Justice has long recognized "that the contempt of Congress statute was not intended to apply and could not constitutionally be applied to an Executive Branch official who asserts the President's claim of executive privilege." *Prosecution for Contempt of Congress of an Executive Branch Official Who Has Asserted a Claim of Executive Privilege*, 8 Op. O.L.C. 101, 102 (1984) ("*Prosecution for Contempt*"); *see also Application of 28 U.S.C. § 458 to Presidential Appointment of Federal Judges*, 19 Op. O.L.C. 350, 356 (1995) ("[T]he criminal contempt of Congress statute does not apply to the President or presidential subordinates who assert executive privilege."). As Assistant Attorney General Olson explained, "the Constitution does not permit Congress to make it a crime for an official to assist the President in asserting a constitutional privilege that is an integral part of the President's responsibilities under the Constitution." *Prosecution for Contempt*, 8 Op. O.L.C. at 140. To do so "would be to deter the President from asserting executive privilege and to make it difficult for him to enlist the aid of his subordinates in the process," thereby "burden[ing] and immeasurably impair[ing] the President's ability to fulfill his constitutional duties." *Id.* at 134, 137. Assistant Attorney General Walter Dellinger adhered to that reasoning in 1995, recounting that the "application of the contempt statute against an assertion of executive privilege would seriously disrupt the balance between the President and Congress." *Application of 28 U.S.C. § 458 to Presidential Appointment of Federal Judges*, 19 Op. O.L.C. at 356.

This Office has further confirmed that the same "principles . . . similarly shield a current or former senior adviser to the President from prosecution for lawfully invoking his or her immunity from compelled congressional testimony." *Whether the Department of Justice May Prosecute White House Officials for Contempt of Congress*, 32 Op. O.L.C. 65, 68 (2008). Subjecting a senior presidential adviser to prosecution for asserting a good-faith claim of testimonial immunity would equally impose upon the President "the untenable position of having to place a subordinate at the risk of a criminal conviction and possible jail sentence in order for the President to exercise a responsibility he found necessary to the performance of his

constitutional duty.” *Id.* (quoting *Prosecution for Contempt*, 8 Op. O.L.C. at 136). In sum, “[t]o seek criminal punishment for those who have acted to aid the President’s performance of his duty would be . . . inconsistent with the Constitution.” *Id.* at 69 (quoting *Prosecution for Contempt*, 8 Op. O.L.C. at 142).

We similarly believe that Congress could not lawfully exercise any inherent contempt authority against Mr. McGahn for asserting immunity. The constitutional separation of powers bars Congress from exercising its inherent contempt power in the face of a presidential assertion of executive privilege. An attempt to exercise inherent contempt powers in such a circumstance would be without precedent and “would immeasurably burden the President’s ability to assert the privilege and to carry out his constitutional functions.” *Prosecution for Contempt*, 8 Op. O.L.C. at 136. This is so because, as Assistant Attorney General Olson concluded, “the same reasoning that suggests that the [criminal contempt] statute could not constitutionally be applied against a Presidential assertion of privilege applies to Congress’ inherent contempt powers as well.” *Id.* at 140 n.42. Congress may not impede the President’s ability to carry out his constitutionally assigned functions by “arrest[ing], bring[ing] to trial, and punish[ing] an executive official who asserted a Presidential claim of executive privilege.” *Id.* The same rationale applies equally to an exercise of inherent contempt powers against a senior aide who has complied with a presidential direction that he not provide testimony to a congressional committee.

## V.

The immunity of the President’s immediate advisers from compelled congressional testimony on matters related to their official responsibilities has long been recognized and arises from the fundamental workings of the separation of powers. This immunity applies to the former White House Counsel. Accordingly, Mr. McGahn is not legally required to appear and testify about matters related to his official duties as Counsel to the President.

Please let us know if we may be of further assistance.



STEVEN A. ENGEL  
*Assistant Attorney General*



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit D**



**The Attorney General**  
Washington, D.C.

March 22, 2019

The Honorable Lindsey Graham  
Chairman, Committee on the Judiciary  
United States Senate  
290 Russell Senate Office Building  
Washington, D.C. 20510

The Honorable Jerrold Nadler  
Chairman, Committee on the Judiciary  
United States House of Representatives  
2132 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Dianne Feinstein  
Ranking Member, Committee on the Judiciary  
United States Senate  
331 Hart Senate Office Building  
Washington, D.C. 20510

The Honorable Doug Collins  
Ranking Member, Committee on the Judiciary  
United States House of Representatives  
1504 Longworth House Office Building  
Washington, D.C. 20515

Dear Chairman Graham, Chairman Nadler, Ranking Member Feinstein, and Ranking Member Collins:

I write to notify you pursuant to 28 C.F.R. § 600.9(a)(3) that Special Counsel Robert S. Mueller III has concluded his investigation of Russian interference in the 2016 election and related matters. In addition to this notification, the Special Counsel regulations require that I provide you with “a description and explanation of instances (if any) in which the Attorney General” or acting Attorney General “concluded that a proposed action by a Special Counsel was so inappropriate or unwarranted under established Departmental practices that it should not be pursued.” 28 C.F.R. § 600.9(a)(3). There were no such instances during the Special Counsel’s investigation.

The Special Counsel has submitted to me today a “confidential report explaining the prosecution or declination decisions” he has reached, as required by 28 C.F.R. § 600.8(c). I am reviewing the report and anticipate that I may be in a position to advise you of the Special Counsel’s principal conclusions as soon as this weekend.

Separately, I intend to consult with Deputy Attorney General Rosenstein and Special Counsel Mueller to determine what other information from the report can be released to Congress and the public consistent with the law, including the Special Counsel regulations, and the Department’s long-standing practices and policies. I remain committed to as much transparency as possible, and I will keep you informed as to the status of my review.

Finally, the Special Counsel regulations provide that “the Attorney General may determine that public release of” this notification “would be in the public interest.” 28 C.F.R. § 600.9(c). I have so determined, and I will disclose this letter to the public after delivering it to you.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Barr", is written over the word "Sincerely,".

William P. Barr

Attorney General

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit E**

RPTR FORADORI

EDTR SECKMAN

FORMER SPECIAL COUNSEL ROBERT S. MUELLER III ON THE INVESTIGATION INTO  
RUSSIAN INTERFERENCE IN THE 2016 PRESIDENTIAL ELECTION

Wednesday, July 24, 2019

U.S. House of Representatives,

Permanent Select Committee on Intelligence,

Washington, D.C.

The committee met, pursuant to call, at 12:50 p.m., in Room HVC-304, Capitol  
Visitor Center, the Honorable Adam Schiff (chairman of the committee) presiding.

Present: Representatives Schiff, Himes, Sewell, Carson, Speier, Quigley,  
Swalwell, Castro, Heck, Welch, Maloney, Demings, Krishnamoorthi, Nunes, Conaway,  
Turner, Wenstrup, Stewart, Crawford, Stefanik, Hurd, and Ratcliffe.

The Chairman. The committee will come to order. At the outset and on behalf of my colleagues, I want to thank you, Special Counsel Mueller, for a lifetime of service to the country. Your report, for those who have taken the time to study it, is methodical, and it is devastating, for it tells the story of a foreign adversary's sweeping and systematic intervention in a close U.S. Presidential election. That should be enough to deserve the attention of every American, as you well point out. But your report tells another story as well.

For the story of the 2016 election is also a story about disloyalty to country, about greed, and about lies. Your investigation determined that the Trump campaign, including Donald Trump himself, knew that a foreign power was intervening in our election and welcomed it, built Russian meddling into their strategy and used it.

Disloyalty to country. Those are strong words, but how else are we to describe a Presidential campaign which did not inform the authorities of an foreign offer of dirt on their opponent, which did not publicly shun it or turn it away, but which instead invited it, encouraged it, and made full use of it. That disloyalty may not have been criminal. Constrained by uncooperative witnesses, the destruction of documents and the use of encrypted communications, your team was not able to establish each of the elements of the crime of conspiracy beyond a reasonable doubt, so not provable crime in any event. But I think maybe something worse.

A crime is the violation of law written by Congress, but disloyalty to country violates the very oath of citizenship, our devotion to a core principle on which our Nation was founded, that we, the people, and not some foreign power that wishes us ill, we decide who governs us.

This is also a story about money, about greed and corruption, about the

leadership of a campaign willing to compromise the Nation's interest, not only to win but to make money at the same time. About a campaign chairman indebted to pro-Russian interests who tried to use his position to clear his debts and make millions. About a national security advisory using his position to make money from still other foreign interests. And about a candidate trying to make more money than all of them put together through a real estate project that to him was worth a fortune, hundreds of millions of dollars and the realization of a life-long ambition: a Trump Tower in the heart of Moscow. A candidate who in fact viewed his whole campaign as the greatest infomercial in history.

Donald Trump and his senior staff were not alone in their desire to use the election to make money. For Russia, too, there was a powerful financial motive. Putin wanted relief from economic sanctions imposed in the wake of Russia's invasion of Ukraine and over human rights violations.

The secret Trump Tower meeting between the Russians and senior campaign officials was about sanctions. The secret conversations between Flynn and the Russian Ambassador were about sanctions. Trump and his team wanted more money for themselves, and the Russians wanted more money for themselves and for their oligarchs.

The story doesn't end here either, for your report also tells a story about lies, lots of lies. Lies about a gleaming tower in Moscow and lies about talks with the Kremlin. Lies about the firing of FBI Director James Comey and lies about efforts to fire you, Director Mueller, and lies to cover it up. Lies about secret negotiations with the Russians over sanctions and lies about WikiLeaks. Lies about polling data and lies about hush money payments. Lies about meetings in the Seychelles to set up secret back channels and lies about a secret meeting in New York Trump Tower. Lies to the FBI. Lies to your staff. And lies to this committee. Lies to obstruct an investigation into the

most serious attack on our democracy by a foreign power in our history.

That is where your report ends, Director Mueller, with a scheme to cover up, obstruct, and deceive every bit as systematic and pervasive as the Russian disinformation campaign itself, but far more pernicious since this rot came from within. Even now, after 448 pages and 2 volumes, the deception continues. The President and his acolytes say your report found no collusion, though your report explicitly declined to address that question, since collusion can involve both criminal and noncriminal conduct.

Your report laid out multiple offers of Russian help to the Trump campaign, the campaign's acceptance of that help, and overt acts in furtherance of Russian help. To most Americans, that is the very definition of collusion, whether it is a crime or not. They say your report found no evidence of obstruction, though you outline numerous actions by the President intended to obstruct the investigation.

They say the President has been fully exonerated, though you specifically declare you could not exonerate him. In fact, they say your whole investigation was nothing more than a witch hunt, that the Russians didn't interfere in our election, that it is all a terrible hoax. The real crime, they say, is not that the Russians intervened to help Donald Trump but that the FBI had the temerity to investigate it when they did.

But, worst of all, worse than all the lies and the greed is the disloyalty to country. For that, too, continues. When asked if the Russians intervene again, will you take their help, Mr. President? Why not, was the essence of his answer; everyone does it.

No, Mr. President, they don't. Not in the America envisioned by Jefferson, Madison, and Hamilton. Not for those who believe in the idea that Lincoln labored until his dying day to preserve the idea animating our great national experiments so unique then, so precious still, that our government is chosen by our people through our franchise, and not by some hostile foreign power.

This is what is at stake, our next election and the one after that for generations to come. Our democracy. This is why your work matters, Director Mueller, this is why our investigation matters, to bring these dangers to light.

Ranking Member Nunes.

[The statement of The Chairman follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*



Mr. Nunes. Thank you, Mr. Chairman.

Welcome, everyone, to the last gasp of the Russia collusion conspiracy theory. As Democrats continue to foist this spectacle on the American people, as well as you, Mr. Mueller, the American people may recall the media first began spreading this conspiracy theory in the spring of 2016 when Fusion GPS, funded by the DNC and the Hillary Clinton campaign, started developing the Steele dossier, an collection outlandish accusations that Trump and his associates were Russian agents.

Fusion GPS, Steele, and other confederates fed these absurdities to naive or partisan reporters, and to top officials in numerous agencies, including the FBI, the Department of Justice, and the State Department. Among other things, the FBI used dossier allegations to obtain a warrant to spy on the Trump campaign, despite acknowledging dossier allegations as being salacious and unverified. Former FBI Director James Comey briefed those allegations to President Obama and President-elect Trump, those briefings conveniently leaked to the press, resulting in the publication of the dossier and launching thousands of false press stories based on the word of a foreign ex-spy. One who admitted he was desperate that Trump lose the election, and who was eventually fired as an FBI source for leaking to the press.

After Comey himself was fired, by his own admission, he leaked derogatory information on President Trump to the press for the specific purpose, and successfully so, of engineering the appointment of a special counsel who sits here before us today.

The FBI investigation was marred by further corruption and bizarre abuses. Top DOJ official Bruce Ohr, whose own wife worked on Fusion GPS' anti-Trump operation, fed Steele's information to the FBI, even after the FBI fired Steele.

The top FBI investigator and his lover, another top FBI official, constantly texted

about how much they hated Trump and wanted to stop him from being elected. And the entire investigation was opened based not on Five Eyes intelligence but on a tip from a foreign politician about a conversation involving Joseph Mifsud. He is a Maltese diplomat who's widely portrayed as a Russian agent but seems to have far more connections with Western governments, including our own FBI and our own State Department, than with Russia.

Brazenly ignoring all these red flags as well as the transparent absurdity of the claims they are making, the Democrats have argued for nearly 3 years that evidence of collusion is hidden just around the corner. Like the Loch Ness monster, they insist it's there, even if no one can find it.

Consider this, in March 2017, Democrats on this committee said they had more than circumstantial evidence of collusion, but they couldn't reveal it yet. Mr. Mueller was soon appointed, and they said he would find the collusion. Then when no collusion was found in Mr. Mueller's indictments, the Democrats said we'd find it in his final report. Then when there was no collusion in the report, we were told Attorney General Barr was hiding it. Then when it was clear Barr wasn't hiding anything, we were told it will be revealed through a hearing with Mr. Mueller himself.

And now that Mr. Mueller is here, they're claiming that the collusion has actually been in his report all along, hidden in plain sight. And they're right. There is collusion in plain sight: collusion between Russia and the Democratic Party. The Democrats colluded with Russian sources to develop the Steele dossier. And Russian lawyer Natalia Veselnitskaya colluded with the dossier's key architect, Fusion GPS head Glenn Simpson.

The Democrats have already admitted, both in interviews and through their usual anonymous statements to reporters, that today's hearing is not about getting information at all. They said they want to, quote, bring the Mueller report to life and create a

television moment through ploys like having Mr. Mueller recite passages from his own report.

In other words, this hearing is political theater. It's a Hail Mary attempt to convince the American people that collusion is real and that it's concealed in the report. Granted, that's a strange argument to make about a report that is public. It's almost like the Democrats prepared arguments accusing Mr. Barr of hiding the report and didn't bother to update their claims once he published the entire thing.

Among congressional Democrats, the Russia investigation was never about finding the truth. It's always been a simple media operation. By their own accounts, this operation continues in this room today. Once again, numerous pressing issues this committee needs to address are put on hold to indulge the political fantasies of people who believed it was their destiny to serve Hillary Clinton's administration.

It's time for the curtain to close on the Russia hoax. The conspiracy theory is dead. At some point, I would argue, we're going to have to get back to work. Until then, I yield back the balance of my time.

[The statement of Mr. Nunes follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

The Chairman. To ensure fairness and make sure that our hearing is prompt -- I know we got a late start, Director Mueller -- the hearing will be structured as follows. Each member of the committee will be afforded 5 minutes to ask questions, beginning with the chair and ranking member. As chair, I will recognize thereafter, in an alternating fashion and descending order of seniority, members of the majority and minority.

After each member has asked his or her questions, the ranking member will be afforded an additional 5 minutes to ask questions, followed by the chair, who will have additional 5 minutes for questions. The ranking member and the chair will not be permitted to delegate or yield our final round of questions to any other member.

After six members of the majority and six members of the minority have concluded their 5-minute rounds of questions, we'll take a 5- or 10-minute break, that we understand you've requested, before resuming the hearing with Congressman Swalwell starting his round of questions.

Special Counsel Mueller is accompanied today by Aaron Zebley, who served as deputy special counsel from May 2017 until May 2019 and had day-to-day oversight of the special counsel's investigation. Mr. Mueller and Mr. Zebley resigned from the Department of Justice at the end of May 2019 when the Special Counsel's Office was closed.

Both Mr. Mueller and Mr. Zebley will be available to answer questions today and will be sworn in consistent with the rules of the House and the committee. Mr. Mueller and Mr. Zebley's appearance today before the committee is in keeping with the committee's long-standing practice of receiving testimony from current or former Department of Justice and FBI personnel regarding open and closed investigative matters.

As this hearing is under oath and before we begin your testimony, Mr. Mueller and Zebley, would you please rise and raise your right hands to be sworn.

Do you swear or affirm that the testimony you're about to give at this hearing is the whole truth and nothing but the truth?

Mr. Mueller. I do.

Mr. Zebley. I do.

The Chairman. The record will reflect that the witnesses have been duly sworn. Ranking member?

Mr. Nunes. Thank you, Mr. Chair. I just want to clarify that this is highly unusual for Mr. Zebley to be sworn in. We're here to ask Director Mueller questions. He's here as counsel. Our side is not going to be directing any questions to Mr. Zebley, and we have concerns about his prior representation of the Hillary Clinton campaign aide. So I just want to voice that concern that we do have, and we will not be addressing any questions to Mr. Zebley today.

The Chairman. I thank the ranking member. I realize, as you probably do, Mr. Zebley, that there is an angry man down the street who's not happy about you being here today, but it is up to this committee and not anyone else who will be allowed to be sworn in and testify, and you are welcome, as a private citizen, to testify, and members may direct their questions to whoever they choose.

With that, Director Mueller, you are recognized for any opening remarks you would like to make.

**TESTIMONY OF ROBERT S. MUELLER III, FORMER SPECIAL COUNSEL**

Mr. Mueller. Thank you. Good afternoon, Chairman Schiff, Ranking Member Nunes, and members of the committee. I testified this morning before the House Judiciary Committee. I ask that the opening statement I made before that committee be incorporated into the record here.

The Chairman. Without objection, Director.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Mr. Mueller. I understand that this committee has a unique jurisdiction and that you are interested in further understanding the counterintelligence implications of our investigation. So let me say a word about how we handled the potential impact of our investigation on counterintelligence matters.

As we explained in our report, the special counsel regulations effectively gave me the role of United States Attorney. As a result, we structured our investigation around evidence for possible use in prosecution of Federal crimes. We did not reach what you would call counterintelligence conclusions. We did, however, set up processes in the office to identify and pass counterintelligence information on to the FBI.

Members of our office periodically briefed the FBI about counterintelligence information. In addition, there were agents and analysts from the FBI who were not on our team but whose job it was to identify counterintelligence information in our files and to disseminate that information to the FBI. For these reasons, questions about what the FBI has done with the counterintelligence information obtained from our investigation should be directed to the FBI.

I also want to reiterate a few points that I made this morning. I am not making any judgments or offering opinions about the guilt or innocence in any pending case. It is unusual for a prosecutor to testify about a criminal investigation, and given my role as a prosecutor, there are reasons why my testimony will necessarily be limited.

First, public testimony could affect several ongoing matters. In some of these matters, court rules or judicial orders limit the disclosure of information to protect the fairness of the proceedings. And consistent with longstanding Justice Department policy, it would be inappropriate for me to comment in any way that could affect an ongoing matter.

Second, the Justice Department has asserted privileges concerning investigative information and decisions, ongoing matters within the Justice Department, and deliberations within our office. These are Justice Department privileges that I will respect. The Department has released a letter discussing the restrictions on my testimony. I, therefore, will not be able to answer questions about certain areas that I know are of public interest.

For example, I am unable to address questions about the opening of the FBI's Russia investigation, which occurred months before my appointment, or matters related to the so-called Steele dossier. These matters are the subject of ongoing review by the Department. Any questions on these topics should, therefore, be directed to the FBI or the Justice Department.

Third, as I explained this morning, it is important for me to adhere to what we wrote in our report. The report contains our findings and analysis and the reasons for the decisions we made. We stated the results of our investigation with precision. I do not intend to summarize or describe the results of our work in a different way in the course of my testimony today.

As I stated in May, I also will not comment on the actions of the Attorney General or of Congress. I was appointed as a prosecutor, and I intend to adhere to that role and to the Department's standards that govern.

Finally, as I said this morning, over the course of my career, I have seen a number of challenges to our democracy. The Russian Government's efforts to interfere in our election is among the most serious, and I am sure the committee agrees.

Now, before we go to questions, I want to add one correction to my testimony this morning. I want to go back to one thing that was said this morning by Mr. Lieu, who said, and I quote: You didn't charge the President because of the OLC opinion.



That is not the correct way to say it. As we say in the report, and as I said at the opening, we did not reach a determination as to whether the President committed a crime.

And, with that, Mr. Chairman, I'm ready to answer questions.

[The statement of Mr. Mueller follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

The Chairman. Thank you, Director Mueller.

I recognize myself for 5 minutes.

Director Mueller, your report describes a sweeping and systemic effort by Russia to influence our Presidential election. Is that correct?

Mr. Mueller. That is correct.

The Chairman. And during the course of this Russian interference in the election, the Russians made outreach to the Trump campaign, did they not?

Mr. Mueller. That occurred over the course of -- yeah, that occurred.

The Chairman. It's also clear from your report that, during that Russian outreach to the Trump campaign, no one associated with the Trump campaign ever called the FBI to report it. Am I right?

Mr. Mueller. I don't know that for sure.

The Chairman. In fact, the campaign welcomed the Russian help, did they not?

Mr. Mueller. I think we reported in our -- in the report indications that that occurred. Yes.

The Chairman. The President's son said when he was approached about dirt on Hillary Clinton that the Trump campaign would love it?

Mr. Mueller. That is generally what was said. Yes.

The Chairman. The President himself called on the Russians to hack Hillary's emails?

Mr. Mueller. There was a statement by the President in those general lines.

The Chairman. And numerous times during the campaign, the President praised the releases of the Russian-hacked emails through WikiLeaks.

Mr. Mueller. That did occur.

The Chairman. Your report found that the Trump campaign planned, quote, a press strategy, communications campaign, and messaging, unquote, based on that Russian assistance?

Mr. Mueller. I am not familiar with that.

The Chairman. That language comes from Volume I, page 54.

Apart from the Russians wanting to help Trump win, several individuals associated with the Trump campaign were also trying to make money during the campaign and transition. Is that correct?

Mr. Mueller. That is true.

The Chairman. Paul Manafort was trying to make money or achieve debt forgiveness from a Russian oligarch?

Mr. Mueller. Generally, that is accurate.

The Chairman. Michael Flynn was trying to make money from Turkey?

Mr. Mueller. True.

The Chairman. Donald Trump was trying to make millions from a real estate deal in Moscow?

Mr. Mueller. To the extent you're talking about the hotel in Moscow?

The Chairman. Yes.

Mr. Mueller. Yes.

The Chairman. When your investigation looked into these matters, numerous Trump associates lied to your team, the grand jury, and Congress?

Mr. Mueller. A number of persons that we interviewed in our investigation it turns out did lie.

The Chairman. Mike Flynn lied?

Mr. Mueller. He was convicted of lying, yes.

The Chairman. George Papadopoulos was convicted of lying?

Mr. Mueller. True.

The Chairman. Paul Manafort was convicted of lying?

Mr. Mueller. True.

The Chairman. Paul Manafort, in fact, went so far as to encourage other people to lie?

Mr. Mueller. That is accurate.

The Chairman. Manafort's deputy, Rick Gates, lied?

Mr. Mueller. That is accurate.

The Chairman. Michael Cohen, the President's lawyer, was indicted for lying?

Mr. Mueller. True.

The Chairman. He lied to stay on message with the President?

Mr. Mueller. Allegedly by him.

The Chairman. And when Donald Trump called your investigation a witch hunt, that was also false, was it not?

Mr. Mueller. I like to think so, yes.

The Chairman. Well, your investigation is not a witch hunt, is it?

Mr. Mueller. It is not a witch hunt.

The Chairman. When the President said the Russian interference was a hoax, that was false, wasn't it?

Mr. Mueller. True.

The Chairman. When he said it publicly, it was false?

Mr. Mueller. He did say publicly that it was false. Yes.

The Chairman. And when he told it to Putin, that was false, too, wasn't it?

Mr. Mueller. That I'm not familiar with.

The Chairman. When the President said he had no business dealings with Russia. That was false, wasn't it?

Mr. Mueller. I'm not going to go into the details of the report along those lines.

The Chairman. When the President said he had no business dealings with Russia, in fact, he was seeking to build a Trump Tower in Moscow, was he not?

Mr. Mueller. I think there's some question about when this was accomplished.

The Chairman. Well, you would consider a billion dollar deal to build a tower in Moscow to be business dealings, wouldn't you, Director Mueller?

Mr. Mueller. Absolutely.

The Chairman. In short, your investigation found evidence that Russia wanted to help Trump win the election, right?

Mr. Mueller. I think, generally, that would be accurate.

The Chairman. Russia informed campaign officials of that?

Mr. Mueller. I'm not certain to what conversation you're referring to.

The Chairman. Well, through an intermediary, they informed Papadopoulos that they could help with the anonymous release of stolen emails.

Mr. Mueller. Accurate.

The Chairman. Russia committed Federal crimes in order to help Donald Trump?

Mr. Mueller. When you're talking about the computer crimes charged in our case, absolutely.

The Chairman. The Trump campaign officials built their strategy, their messaging strategy, around those stolen documents?

Mr. Mueller. Generally, that's true.

The Chairman. And then they lied to cover it up?

Mr. Mueller. Generally, that's true.

The Chairman. Thank you.

Mr. Nunes.

Mr. Nunes. Thank you.

Welcome, Director. As a former FBI Director, you'd agree that the FBI is the world's most capable law enforcement agency?

Mr. Mueller. I would say we're -- yes.

Mr. Nunes. The FBI claims the counterintelligence investigation of the Trump campaign began on July 31, 2016, but in fact, it began before that. In June 2016, before the investigation officially opened, Trump campaign associates Carter Page and Stephen Miller, a current Trump advisor, were invited to attend a symposium at Cambridge University in July of 2016. Your office, however, did not investigate who was responsible for inviting these Trump Associates to this symposium.

Your investigators also failed to interview Steven Schrage, an American citizen who helped organize the event and invited Carter Page to it. Is that correct?

Mr. Mueller. Can you repeat the question?

Mr. Nunes. Whether or not you interviewed Steven Schrage, who organized --

Mr. Mueller. Those areas I'm going to stay away from.

Mr. Nunes. The first Trump associate to be investigated was General Flynn. Many of the allegations against him stem from false media reports that he had an affair with a Cambridge academic, Svetlana Lokhova, and that Lokhova was a Russian spy. Some of these allegations were made public in a 2017 article written by British intelligence historian Christopher Andrew. Your report fails to reveal how or why Andrew and his collaborator, Richard Dearlove, former head of Britain's MI6, spread these allegations. And you failed to interview Svetlana Lokhova about these matters. Is that correct?

Mr. Mueller. I'm not going to get into those matters to which you refer.

Mr. Nunes. You had a team of 19 lawyers, 40 agents, and an unlimited budget, correct, Mr. Mueller?

Mr. Mueller. I would not say we had an unlimited budget.

Mr. Nunes. Let's continue with the ongoing or the opening of the investigation supposedly on July 31, 2016. The investigation was not open based on an official product from Five Eyes intelligence, but based on a rumor conveyed by Alexander Downer. On Volume I, page 89, your report describes him blandly as a representative of a foreign government, but he was actually a long-time Australia politician, not a military or intelligence official, who had previously arranged a \$25 million donation to the Clinton Foundation and has previous ties to Dearlove.

So Downer conveys a rumor he supposedly heard about a conversation between Papadopoulos and Joseph Mifsud. James Comey has publicly called Mifsud a Russian agent, yet your report does not refer to Mifsud as a Russian agent. Mifsud has extensive contacts with Western governments and the FBI.

For example, there is a recent photo of him standing next to Boris Johnson, the new Prime Minister of Great Britain. What we're trying to figure out here, Mr. Mueller, is if our NATO allies or Boris Johnson have been compromised. So we're trying to figure out, Comey says Mifsud is a Russian agent; you do not. So do you stand by what's in the report?

Mr. Mueller. I stand by that which is in the report, and not so necessarily with that which is not in the report.

Mr. Nunes. I want to return to Mr. Downer, he denies that Papadopoulos mentioned anything to him about Hillary Clinton's emails. And, in fact, Mifsud denies mentioning that to Papadopoulos. He denies that Papadopoulos mentioned anything to

him about Hillary Clinton's emails, and in fact, Mifsud denies mentioning them to Papadopoulos in the first place.

So how does the FBI know to continually ask Papadopoulos about Clinton's emails for the rest of 2016? Even more strangely, your sentencing memo on Papadopoulos blames him for hindering the FBI's ability to potentially detain or arrest Mifsud. But the truth is Mifsud waltzed in and out of the United States in December 2016.

The U.S. media could find him. The Italian press found him. And he's a supposed Russian agent at the epicenter of the purported collusion conspiracy. He's the guy who knows about Hillary Clinton's emails and that the Russians have them. But the FBI failed to question him for a half a year after officially opening the investigation.

And then, according to Volume I, page 193 of your report, once Mifsud finally was questioned, he made false statements to the FBI. But you declined to charge him. Is that correct? You did not indict Mr. Mifsud?

Mr. Mueller. Well, I'm not going to speak to the series of happenings as you articulated them.

Mr. Nunes. But you did not indict Mr. Mifsud?

The Chairman. The time of the gentleman has expired.

Mr. Mueller. Pardon?

Mr. Nunes. You did not indict Mr. Mifsud?

Mr. Mueller. True.

The Chairman. Mr. Himes.

Mr. Himes. Director Mueller, thank you for your lifetime of service to this country, and thank you for your perseverance and patience today. Director, your report opens with two statements of remarkable clarity and power.

The first statement is one that is, as of today, not acknowledged by the President



of the United States, and that is, quote: The Russian Government interfered in the 2016 Presidential election in sweeping and systematic fashion.

The second statement remains controversial amongst Members of this body, same page on your report, and I quote: The Russian Government perceived it would benefit from a Trump Presidency and worked to secure that outcome. Do I have that statement right?

Mr. Mueller. I believe so.

Mr. Himes. Director Mueller, this attack on our democracy involved, as you said, two operations. First, a social media disinformation campaign, this was a targeted campaign to spread false information on places like Twitter and Facebook. Is that correct?

Mr. Mueller. That's correct.

Mr. Himes. Facebook estimated, as per your report, that the Russian fake images reached 126 million people. Is that correct?

Mr. Mueller. I believe that's the sum that we record.

Mr. Himes. Director, who did the Russian social media campaign ultimately intend benefit, Hillary Clinton or Donald Trump?

Mr. Mueller. Donald Trump.

Mr. Himes. The second operation, Director --

Mr. Mueller. Let me just say Donald Trump, but there were instances where Hillary Clinton was subject to much the same behavior.

Mr. Himes. The second operation in the Russian attack was a scheme, what we call the hack and dump, to steal and release hundreds of thousands of emails from the Democratic Party and the Clinton campaign. Is that a fair summary?

Mr. Mueller. That is.

Mr. Himes. Did your investigation find that the releases of the hacked emails were strategically timed to maximize impact on the election?

Mr. Mueller. I'd have to refer you to our report on that question.

Mr. Himes. Page 36, I quote: The release of the documents were designed and timed to interfere with the 2016 U.S. Presidential election. Mr. Mueller, which Presidential candidate was Russia's hacking and dumping operation designed to benefit, Hillary Clinton or Donald Trump?

Mr. Mueller. Mr. Trump.

Mr. Himes. Mr. Mueller, is it possible that this sweeping and systematic effort by Russia actually had an effect on the outcome of the Presidential election?

Mr. Mueller. Those issues are being or have been investigated by other entities.

Mr. Himes. 126 million Facebook impressions, fake rallies, attacks on Hillary Clinton's health, would you rule out that it might have had some effect on the election?

Mr. Mueller. I'm not going to speculate.

Mr. Himes. Mr. Mueller, your report describes a third avenue of attempted Russian interference. That is the numerous links and contacts between the Trump campaign and individuals tied to the Russian Government. Is that correct?

Mr. Mueller. Could you repeat that question?

Mr. Himes. Your report describes what is called a third avenue of Russian interference, and that's the links and contacts between the Trump campaign and individuals tied to the Russian Government?

Mr. Mueller. Yes.

Mr. Himes. Let's bring up slide one, which is about George Papadopoulos, and it reads: On May 6, 2016, 10 days after that meeting with Mifsud, much discussed today, Papadopoulos suggested to a representative of a foreign government that the Trump

campaign had received indications from the Russian Government that it could assist the campaign through the anonymous release of information that would be damaging to Hillary Clinton.

And, Director, that's exactly what happened 2 months later, is it not?

Mr. Mueller. Well, I can speak to the excerpt that you have on the screen as being accurate from the report, but not the second half of your question.

Mr. Himes. Well, the second half, just to refer to Page 6 of the report, is that, on July 22, through WikiLeaks, thousands of these emails that were stolen by the Russian Government appeared, correct? That is on page 6 of the report. This is the WikiLeaks posting of those emails.

Mr. Mueller. I can't find it quickly, but I'm -- please continue.

Mr. Himes. Okay. So, just to be clear, before the public or the FBI ever knew, the Russians previewed for a Trump campaign official, George Papadopoulos, that they had stolen emails that they could release anonymously to help Donald Trump and hurt Hillary Clinton. Is that correct?

Mr. Mueller. I'm not going to speak to that.

Mr. Himes. Director, rather than report this contact with Joseph Mifsud and the notion that there was dirt that the campaign could use, rather than report that to the FBI, that I think most of my constituents would expect an individual to do, Papadopoulos in fact lied about his Russian contact to you. Is that not correct?

Mr. Mueller. That's true.

Mr. Himes. We have an election coming up in 2020, Director, if a campaign receives an offer of dirt from a foreign individual or a government, generally speaking, should that campaign report those contacts?

Mr. Mueller. Should be -- can be, depending on the circumstances, a crime.

Mr. Himes. I will yield back the balance of my time.

The Chairman. Mr. Conaway.

Mr. Conaway. Thank you.

Mr. Mueller, did anyone ask you to exclude anything from your report that you felt should have been in the report?

Mr. Mueller. I don't think so, but it's not a small report.

Mr. Conaway. But no one asked you specifically to exclude something that you believe should have been in there?

Mr. Mueller. Not that I can recall. No.

Mr. Conaway. I yield the balance of my time to Mr. Ratcliffe. Thank you.

Mr. Ratcliffe. I thank the gentleman for yielding.

Good afternoon, Director Mueller. In your May 29 press conference, and again in your opening remarks this morning, you made it pretty clear you wanted the special counsel report to speak for itself. You said at your press conference that that was the office's final position, and we will not comment on any other conclusions or hypotheticals about the President.

Now, you spent the last few hours of your life from Democrats trying to get you to answer all kinds of hypotehticals about the President, and I expect that it may continue for the next few hours of your life. I think you've stayed pretty much true to what your intent and desire was, but I guess, regardless of that, the Special Counsel's Office is closed, and it has no continuing jurisdiction or authority. So what would be your authority or jurisdiction for adding new conclusions or determinations to the special counsel's written report?

Mr. Mueller. As to the latter, I don't know or expect a change in the conclusions that we included in our report.

Mr. Ratcliffe. So, to that point, you addressed one of the issues that I needed to, which was from your testimony this morning, which some construed as a change to the written report. You talked about the exchange that you had with Congressman Lieu. I wrote it down a little bit different. I want to ask you about it so that the record is perfectly clear.

I recorded that he asked you, quote, "The reason you did not indict Donald Trump is because of the OLC opinion stating you cannot indict a sitting President," to which you responded, "That is correct." That response is inconsistent, I think you'll agree, with your written report. I want to be clear that it is not your intent to change your written report. It is your intent to clarify the record today.

Mr. Mueller. As I started today, this afternoon, and added either a footnote or an end note, what I wanted to clarify is the fact that we did not make any determination with regard to culpability, in any way. We did not start that process down the road.

Mr. Ratcliffe. Terrific. Thank you for clarifying the record.

A stated purpose of your appointment as special counsel was to ensure a full and thorough investigation of the Russian Government efforts to interfere in the 2016 Presidential election. As part of that full and thorough investigation, what determination did the Special Counsel Office make about whether the Steele dossier was part of the Russian Government efforts to interfere in the 2016 Presidential election?

Mr. Mueller. Again, when it comes to Mr. Steele, I defer to the Department of Justice.

Mr. Ratcliffe. Well, first of all, Director, I very much agree with your determination that Russia's efforts were sweeping and systematic. I think it should concern every American. That's why I want to know just how sweeping and systematic those efforts were. I want to find out if Russia interfered with our election by providing

false information through sources to Christopher Steele about a Trump conspiracy that you determined didn't exist.

Mr. Mueller. Well, again, I'm not going to discuss the issues with regard to Mr. Steele. In terms of a portrayal of the conspiracies, we returned two indictments in the computer crimes arena, one GRU, and another, active measures, in which we lay out in excruciating detail what occurred in those two --

Mr. Ratcliffe. And I --

Mr. Mueller. -- large conspiracies.

Mr. Ratcliffe. I agree with respect to that, but why this is important is an application and three renewal applications were submitted by the United States Government to spy or surveil on Trump campaign Carter Page, and on all four occasions, the United States Government submitted the Steele dossier as a central piece of evidence with expect to that.

Now, the basic premise of the dossier, as you know, was that there was a well-developed conspiracy of cooperation between the Trump campaign and the Russian Government. But the special counsel investigation didn't establish any conspiracy, correct?

Mr. Mueller. Well, what I can tell you is that the events that you are characterizing here now is part of another matter that is being handled by the Department of Justice.

Mr. Ratcliffe. But you did not establish any conspiracy, much less a well-developed one?

Mr. Mueller. Again, I pass on answering that.

Mr. Ratcliffe. The special counsel did not charge Carter Page with anything?

Mr. Mueller. Special counsel did not.

Mr. Ratcliffe. All right. My time is expired. I yield back.

The Chairman. Ms. Sewell.

Ms. Sewell. Director Mueller, I'd like to turn your attention to the June 9, 2016, Trump Tower meeting. Slide two, which should be on the screen now, is part of an email campaign between Don Jr. -- Donald Trump, Jr., and a publicist representing the son of a Russian oligarch. The email exchange ultimately led to the now infamous June 9, 2016, meeting. The email from the publicist to Donald Trump, Jr., reads in part: The crown prosecutor of Russia offered to provide the Trump campaign with some official documents and information that would incriminate Hillary and her dealings with Russia, and is a part of Russia and its government's support of Mr. Trump.

In this email Donald Trump, Jr., is being told that the Russian Government wants to pass along information which would hurt Hillary Clinton and help Donald Trump. Is that correct?

Mr. Mueller. That's correct.

Ms. Sewell. Now, Trump, Jr.'s, response to that is slide three. He said, and I quote: If it is what you say, I love it, especially later in the summer.

Then Donald Jr. invited senior campaign officials Paul Manafort and Jared Kushner to the meeting, did he not?

Mr. Mueller. He did.

Ms. Sewell. This email exchange is evidence of an offer of illegal assistance, is it not?

Mr. Mueller. I cannot adopt that characterization.

Ms. Sewell. But isn't it against the law for a Presidential campaign to accept anything of value from a foreign government?

Mr. Mueller. Generally speaking, yes, but -- generally the cases are unique.

Ms. Sewell. You say, on page 184 in Volume II, that the Federal campaign-finance law broadly prohibits foreign nationals from making contributions, et cetera, and then you say that foreign nationals may not make a contribution or donation of money or anything of value, it said clearly in the report itself.

Mr. Mueller. Yeah. Thank you.

Ms. Sewell. Now, let's turn to what actually happened at the meeting. When Donald Trump, Jr., and other got to the June 9th meeting, they realized that the Russian delegation didn't have the promised, quote/unquote, dirt. In fact, they got upset about that, did they not?

Mr. Mueller. Generally, yes.

Ms. Sewell. You say in Volume II, page 118, that Trump, Jr., asked: What are we doing here? What do they have on Clinton? And during the meeting, Kushner actually texted Manafort saying it was, quote, a waste of time, end quote. Is that correct?

Mr. Mueller. I believe it's in the report along the lines you specify.

Ms. Sewell. So, to be clear, top Trump campaign officials learned that Russia wanted to help Donald Trump's campaign by giving him dirt on his opponent. Trump, Jr., said: Loved it. And then he and senior officials held a meeting with the Russians to try to get that Russian help, but they were disappointed because the dirt wasn't as good as they had hoped.

So, to the next step, did anyone to your knowledge in the Trump campaign ever tell the FBI of this offer?

Mr. Mueller. I don't believe so.

Ms. Sewell. Did Donald Trump, Jr., tell the FBI that they received an offer of help from the Russians?



Mr. Mueller. I'm going to -- that's about all I'll say on this aspect of it.

Ms. Sewell. Wouldn't it be true, sir, that if they had reported it to the FBI or anyone in that campaign during the course of your 2-year investigation, you would have uncovered such a --

Mr. Mueller. I would hope, yes.

Ms. Sewell. Yes. Sir, is it not the responsibility of political campaigns to inform the FBI if they receive information from a foreign government?

Mr. Mueller. I would think that that's something they would and should do.

Ms. Sewell. Well, not only did the campaign not tell the FBI, they sought to hide the existence of the June 9th meeting for over a year. Is that not correct?

Mr. Mueller. On the general characterization, I would question it. If you're referring to a later initiative that flowed from the media then --

Ms. Sewell. No, what I'm suggesting is that you've said in Volume 2, page 5: On several occasions, the President directed aides not to publicly disclose the email setting up the June 9th meeting.

Mr. Mueller. Yes. That is accurate.

Ms. Sewell. Thanks. Sir, given this illegal assistance by Russians, you chose, even given that, you did not charge Donald Trump, Jr., or any of the other senior officials with conspiracy. Is that right?

Mr. Mueller. Correct.

Ms. Sewell. And while --

Mr. Mueller. If you're talking about other individuals, you're talking about the attendees of June 9, that's accurate.

Ms. Sewell. Yes, that's right. So, Mr. Mueller, even though you didn't charge them with conspiracy, don't you think that the American people would be concerned that

these three senior campaign officials eagerly sought a foreign adversary's help to win elections, and don't you think reporting that is important that we don't set a precedent for future elections?

Mr. Mueller. I can't accept that characterization.

Ms. Sewell. Well, listen, I think that it seems like a betrayal of the American values to me, sir, that someone with -- if not being criminal, it is definitely unethical and wrong, and I would think that we would not want to set a precedent that political campaigns should not divulge of information of its foreign government assistance. Thank you, sir.

The Chairman. Mr. Turner.

Mr. Turner. Mr. Mueller, I have your opening statement, and in the beginning of your opening statement, you indicate that, pursuant to Justice Department regulations, that you submitted a confidential report to the Attorney General at the conclusion of the investigation. What I'd like you to confirm is the report that you did that is the subject matter of this hearing was to the Attorney General?

Mr. Mueller. Yes.

Mr. Turner. You also state in this opening statement that you threw overboard the word "collusion" because it's not a legal term. You would not conclude because collusion was not a legal term?

Mr. Mueller. Well, it depends on how you want to use the word. In the general parlance, people can think of it that way, but if you're talking about in a criminal statute arena, you can't because it's much more accurately described as conspiracy.

Mr. Turner. In your words, it's not a legal term so you didn't put it in your conclusion, correct? That's what your opening statement --

Mr. Mueller. That's correct.

Mr. Turner. Mr. Mueller, I want to talk about your powers and authorities. Now, the Attorney General in the appointment order gave you powers and authorities that reside in the Attorney General. Now, the Attorney General has no ability to give you powers and authority greater than the powers and authority of the Attorney General, correct?

Mr. Mueller. Yeah, I think that is correct.

Mr. Turner. Mr. Mueller, I want to focus on one word in your report. It's the second to the last word in the report; it's "exonerate." The report states: Accordingly, while this report does not conclude that the President committed a crime, it does not exonerate him.

Now, in the Judiciary Hearing, in your prior testimony, you have already agreed with Mr. Ratcliffe that "exonerate" is not a legal term, that there is not a legal test for this. So I have a question for you, Mr. Mueller.

Mr. Mueller, does the Attorney General have the power or authority to exonerate? Now, what I'm putting up here is the United States Code. This is where the Attorney General gets his power and the Constitution and the annotated cases of these, which we've searched. We even went to your law school because I went to Case Western, but I thought maybe your law school teaches it differently, and we got the criminal law textbook from your law school.

Mr. Mueller, nowhere in these, because we had them scanned, is there a process or description on exonerate. There's no Office of Exoneration at the Attorney General's office. There's no certificate at the bottom of his desk. Mr. Mueller, would you agree with me that the Attorney General does not have the power to exonerate?

Mr. Mueller. I'm going to pass on that.

Mr. Turner. Why?

Mr. Mueller. Because it embroils us in a legal discussion, and I'm not prepared to do a legal discussion in that arena.

Mr. Turner. Well, Mr. Mueller, you would not disagree with me when I say that there is no place that the Attorney General has the power to exonerate and he's not been given that authority?

Mr. Mueller. Again, I'm not going to -- I take your question.

Mr. Turner. Well, the one thing that I guess is that the Attorney General probably knows that he can't exonerate either, and that's the part that kind of confuses me. Because if the Attorney General doesn't have the power to exonerate, then you don't have to power to exonerate, and I believe he knows he doesn't the have power to exonerate.

So this is the part I don't understand. If your report is to the Attorney General, and the Attorney General doesn't have the power to exonerate, and he does not -- and he knows that you do not have that power, you don't have to tell him that you're not exonerating the President; he knows this already. So then that kind of changed the context of the report.

Mr. Mueller. No, we include it in the report for exactly that reason. He may not know it, and he should know it.

Mr. Turner. So you believe that Attorney Bill Barr believes that somewhere in the hallways of the Department of Justice, there's an Office of Exoneration?

Mr. Mueller. No, that's not what I said.

Mr. Turner. Well, I believe he knows, and I don't believe you put that in there for Mr. Barr. I think you put that in there for exactly what I'm going to discuss next. And that is, in The Washington Post yesterday, when speaking of your report, the article said: Trump could not be exonerated of trying to obstruct the investigation itself. Trump

could not be exonerated.

Now, that statement is correct, Mr. Mueller, in that no one can be exonerated. The reporter wrote this -- this reporter can't be exonerated. Mr. Mueller, you can't be exonerated. In fact, in our criminal justice system, there is no power or authority to exonerate. Now, this is my concern, Mr. Mueller. This is the headline on all of the news channels while you were testifying today: "Mueller: Trump was not exonerated."

Now, Mr. Mueller, what you know is that this can't say, "Mueller exonerated Trump," because you don't have the power or authority to exonerate Trump. You have no power to declare him exonerated than you have the power to declare him Anderson Cooper. So the problem that I have here is that since there's no one in the criminal justice system that has that power -- the President pardons; he doesn't exonerate. Courts and juries don't declare innocent; they declare not guilty. They don't even declare exoneration. The statement about exoneration is misleading, and it's meaningless, and it colors this investigation. One word out of the entire portion of your report, and it's a meaningless word that has no legal meaning, and it has colored your entire report.

I yield back.

The Chairman. The time of the gentleman has expired. Mr. Carson.

Mr. Carson. Thank you, Chairman.

Thank you, Director Mueller, for your years of service to our country. I want to look more closely, sir, at the Trump campaign chairman, Paul Manafort, an individual who I believe betrayed our country, who lied to a grand jury, who tampered with witnesses, and who repeatedly tried to use his position with the Trump campaign to make more money. Let's focus on the betrayal and greed.

Your investigation, sir, found a number of troubling contacts between Mr. Manafort and Russian individuals during and after the campaign. Is that right, sir?

Mr. Mueller. Correct.

Mr. Carson. In addition to the June 9th meeting just discussed, Manafort often met several times with a man named Konstantin Kilimnik, who the FBI assessed to have ties with Russian intel agencies. Is that right, sir?

Mr. Mueller. Correct.

Mr. Carson. In fact, Mr. Manafort didn't just meet with him; he shared private Trump campaign polling information with this man linked to Russian intelligence. Is that right, sir?

Mr. Mueller. That is correct.

Mr. Carson. And in turn, the information was shared with a Russian oligarch tied to Vladimir Putin. Is that right, sir?

Mr. Mueller. Allegedly.

Mr. Carson. Director Mueller, meeting with him wasn't enough. Sharing internal polling information wasn't enough. Mr. Manafort went so far as to offer this Russian oligarch tied to Putin a private briefing on the campaign. Is that right, sir?

Mr. Mueller. Yes, sir.

Mr. Carson. And, finally, Mr. Manafort also discussed internal campaign strategy on four battleground States -- Michigan, Wisconsin, Pennsylvania, and Minnesota -- with the Russian-intelligence-linked individual. Did he not, sir?

Mr. Mueller. That's reflected in the report, as were the items you listed previously.

Mr. Carson. Director Mueller, based on your decades of years of experience at the FBI, would you agree, sir, that it creates a national security risk when a Presidential

campaign chairman shares private polling information on the American people, private political strategy related to winning the votes of the American people, and private information about American battleground States with a foreign adversary?

Mr. Mueller. Is that the question, sir?

Mr. Carson. Yes, sir.

Mr. Mueller. I'm not going to speculate along those lines. To the extent that it's within the lines of the report, then I'd support it. Anything beyond that is not part of that which I would support.

Mr. Carson. Well, I think it does, sir. I think it shows an infuriating lack of patriotism from the very people seeking the highest office in the land. Director Mueller, Manafort didn't share this information exchange for nothing, did he, sir?

Mr. Mueller. I can't answer that question without knowing more about the question.

Mr. Carson. Well, it's clear that he hoped to be paid back money he was owed by Russian or Ukrainian oligarchs in return for the passage of private campaign information, correct?

Mr. Mueller. That is true.

Mr. Carson. Director Mueller, as my colleague, Mr. Heck, will discuss later, greed corrupts. Would you agree, sir, that the sharing of private campaign information in exchange for money represents a particular kind of corruption, one that presents a national security risk to our country, sir?

Mr. Mueller. I'm not going to opine on that. I don't have the expertise in that arena to really opine?

Mr. Carson. Would you agree, sir, that Manafort's contacts with Russians close to Vladimir Putin and his efforts to exchange private information on Americans for money

left him vulnerable to blackmail by the Russians?

Mr. Mueller. I think generally so that would be the case.

Mr. Carson. Would you agree, sir, that these acts demonstrated a betrayal of the democratic values our country rests on?

Mr. Mueller. I can't agree with that.

Mr. Carson. Director Mueller --

Mr. Mueller. Not that it's not true, but I cannot agree with it.

Mr. Carson. Yes, sir. Director Mueller, well, I can tell you that, in my years as a law enforcement officer and as a Member of Congress, fortunate to serve on the Intel Committee, I know enough to say, yes, trading political secrets for money with a foreign adversary can corrupt, and it can leave you open to blackmail. And it certainly represents a betrayal of the values underpinning our democracy.

I want to thank you for your service again, Director Mueller, we appreciate you for coming today. I yield back, chairman.

The Chairman. Dr. Wenstrup.

Dr. Wenstrup. Thank you, Mr. Chairman.

Thank you, Mr. Mueller, for being here today. Mr. Mueller, is it accurate to say your investigation found no evidence of members of the Trump campaign were involved in the theft or publication of Clinton campaign-related emails?

Mr. Mueller. Can you repeat the question?

Dr. Wenstrup. It is accurate to say your investigation found no evidence that members of the Trump campaign were involved in the theft or publication of the Clinton campaign-related emails?

Mr. Mueller. I don't know the -- I don't know. I -- well --

Dr. Wenstrup. Well, Volume II, page 5, the investigation did not establish that



members of the Trump campaign conspired or coordinated with the Russian Government in its election interference activities. So it would, therefore, be inaccurate, based on this, to describe that finding as open to doubt, and that finding being that the Trump campaign was involved with theft or publication of the Clinton campaign emails. Are you following that, sir?

Mr. Mueller. I do believe I'm following it, but it is -- that portion or that matter does not fall within our jurisdiction or fall within our investigation.

Dr. Wenstrup. Well, basically, what your report says, Volume II, page 5, I just want to be clear that open to doubt is how the committee Democrats describe this finding in their minority views of our 2018 report, and it kind of flies in the face of what you have in your report. So is it accurate also to say the investigation found no documentary evidence that George Papadopoulos told anyone affiliated with the Trump campaign about Joseph Mifsud's claims that the Russians had dirt on candidate Clinton?

Mr. Mueller. Let me turn that over to Mr. Zebley.

Dr. Wenstrup. I'd like to ask you, sir. This is your report, and that's what I'm basing this on.

Mr. Mueller. Then could you repeat the question for me again?

Dr. Wenstrup. Yeah, is it accurate to say that the investigation found no documentary evidence that George Papadopoulos told anyone affiliated with the Trump campaign about Joseph Mifsud's claims that the Russians had dirt on candidate Clinton?

Mr. Mueller. I believe it appearing in the report, that it is accurate.

Dr. Wenstrup. So, in the report, it says, no documentary evidence that Papadopoulos shared this information with the campaign. It's, therefore, inaccurate to conclude that by the time of the June 9, 2016, Trump Tower meeting, quote: The campaign was likely already on notice via George Papadopoulos' contact with Russian

agents that Russia in fact had damaging information on Trump's opponent.

Would you say that that is inaccurate to say that it's likely already --

Mr. Mueller. I direct you to the report.

Dr. Wenstrup. Well, I appreciate that because the Democrats jumped to this incorrect conclusion in their minority views, again, which contradicts what you have in your report.

I'm concerned about a number of statements I'd like you to clarify because a number of Democrats have made some statements that I have concerns with and maybe you can clear them up. So a member of this committee said President Trump was a Russian agent after your report was publicly released. That statement is not supported by your report, correct?

Mr. Mueller. That is accurate. It's not supported.

Dr. Wenstrup. Multiple Democrat Members have asserted that Paul Manafort met with Julian Assange in 2016 before WikiLeaks released DNC emails, implying Manafort colluded with Assange. Because your report does not mention finding evidence that Manafort met with Assange, I would assume that means you found no evidence of this meeting. Is that assumption correct?

RPTR ZAMORA

EDTR HOFSTAD

[1:52 p.m.]

Mr. Mueller. I'm not certain I agree with that assumption.

Dr. Wenstrup. But you make no mention of it in your report. Would you agree with that?

Mr. Mueller. Yes, I would agree with that.

Dr. Wenstrup. Okay.

Mr. Mueller, does your report contain any evidence that President Trump was enrolled in the Russian system of kompromat, as a member of this committee once claimed?

Mr. Mueller. Well, to -- what I can speak to is information -- evidence that we picked up as the special counsel. And I think that's accurate, as far as it goes.

Dr. Wenstrup. Thank you. I appreciate that.

So let's go for a second to scope. Did you ask the Department of Justice to expand the scope of the special counsel's mandate related to August 2, 2017, or August 20, 2017, scoping memoranda?

Mr. Mueller. Well, there -- without looking at the memoranda, I could not answer that question.

Dr. Wenstrup. Well, let me ask you, did you ever make a request to expand your office's mandate at all?

Mr. Mueller. Generally, yes.

Dr. Wenstrup. And was that ever denied?

Mr. Mueller. I'm not going to speak to that. It goes to --

Dr. Wenstrup. You're not going to speak to that?

Mr. Mueller. -- the internal deliberations.

Dr. Wenstrup. Well, I'm just trying to understand process. Does expanding the scope come from the Acting Attorney General or --

Mr. Mueller. I'm not --

Dr. Wenstrup. -- Rod Rosenstein? Or does it come from you? Or can it come from either?

Mr. Mueller. Yeah, I'm not going to discuss any other alternatives.

Dr. Wenstrup. Thank you, Mr. Mueller.

The Chairman. Ms. Speier.

Ms. Speier. Thank you, Mr. Chairman.

Mr. Mueller, I think I can say without fear of contradiction that you are the greatest patriot in this room today, and I want to thank you for being here.

Mr. Mueller. Thank you.

Ms. Speier. You said in your report -- and I'm going to quibble with your words -- that the Russian intervention was sweeping and systematic. I would quibble with that because I don't think it was just an intervention; I think it was an invasion. And I don't think it was just sweeping and systematic; I think it was sinister and scheming.

But having said that, one of my colleagues earlier here referred to this Russian intervention as a hoax. And I'd like to get your comment on that.

On page 26 of your report, you talk about the Internet Research Agency and how tens of millions of U.S. persons became engaged with the posts that they made, that there were some 80,000 posts on Facebook, that Facebook itself admitted that 126 million people had probably seen the posts that were put up by the Internet Research Agency, that they had 3,800 Twitter accounts and had designed more than 175,000

tweets that probably reached 1.4 million people.

The Internet Research Agency was spending about \$1.25 million a month on all of this social media in the United States in what I would call an invasion in our country.

Would you agree that it was not a hoax that the Russians were engaged in trying to impact our election?

Mr. Mueller. Absolutely. That was not a hoax. The indictments we returned against the Russians, two different ones, were substantial in their scope, using the "scope" word again.

And I think one of the -- we have underplayed, to a certain extent, that aspect of our investigation that has and would have long-term damage to the United States that we need to move quickly to address.

Ms. Speier. Thank you for that. I'd like to drill down on that a little bit more.

The Internet Research Agency actually started in 2014 by sending over staff as tourists, I guess, to start looking at where they wanted to engage. And there are many that suggest, and I'm interested in your opinion, as to whether or not Russia is presently in the United States looking for ways to impact the 2020 election.

Mr. Mueller. I can't speak to that. That would be in levels of classification.

Ms. Speier. All right.

Let me ask you this. Oftentimes when we engage in these hearings, we forget the forest for the trees. You have a very large report here of over 400 pages. Most Americans have not read it. We have read it. Actually, the FBI Director yesterday said he hadn't read it, which was a little discouraging.

But, on behalf of the American people, I want to give you a minute and 39 seconds to tell the American people what you would like them to glean from this report.

Mr. Mueller. Well, we spent substantial time ensuring the integrity of the

report, understanding that it would be our living message to those who come after us. But it also is a signal, a flag to those of us who have some responsibility in this area to exercise those responsibilities swiftly and don't let this problem continue to linger as it has over so many years.

Ms. Speier. All right. You didn't take the total amount of time, so I'm going to yield the rest of my time to the chairman.

The Chairman. I thank the gentlewoman for yielding.

Director Mueller, I wanted to ask you about conspiracy. Generally, a conspiracy requires an offer of something illegal, the acceptance of that offer, and an overt act in furtherance of it. Is that correct?

Mr. Mueller. Correct.

The Chairman. And Don Jr. was made aware that the Russians were offering dirt on his opponent, correct?

Mr. Mueller. I don't know that for sure, but one would assume, given his presence at the meeting.

The Chairman. And when you say that you would love to get that help, that would constitute an acceptance of the offer?

Mr. Mueller. It's a wide-open request.

The Chairman. And it would certainly be evidence of an acceptance if you say -- when somebody offers you something illegal and you say, "I would love it," that would be considered evidence of an acceptance.

Mr. Mueller. I'm going to stay away from any -- addressing one particular or two particular situations.

The Chairman. Well, this particular situation -- well, I'll have to continue in a bit. I now yield to Mr. Stewart.

Mr. Stewart. Mr. Mueller, it's been a long day. Thank you for being here.

I do have a series of important questions for you, but before I do that, I want to take a moment to reemphasize something that my friend Mr. Turner has said. I've heard many people state, "No person is above the law." And many times recently, they add "not even the President," which I think is blazingly obvious to most of us.

Mr. Mueller. I'm having a little problem hearing you, sir.

Mr. Stewart. Is this better?

Mr. Mueller. That is better. Thank you.

Mr. Stewart. I want you to know I agree with the statement that no person is above the law. But there's another principle that we also have to defend, and that is the presumption of innocence. And I'm sure you agree with this principle, though I think the way that your office phrased some parts of your report, it does make me wonder, I have to be honest with you.

For going on 3 years, innocent people have been accused of very serious crimes, including treason -- accusations made even here today. They have had their lives disrupted and in some cases destroyed by false accusations for which there is absolutely no basis other than some people desperately wish that it was so.

But your report is very clear: no evidence of conspiracy, no evidence of coordination. And I believe we owe it to these people who have been falsely accused, including the President and his family, to make that very clear.

Mr. Mueller, the credibility of your report is based on the integrity of how it is handled. And there's something that I think bothers me and other Americans. I'm holding here in my hand a binder of 25 examples of leaks that occurred from the Special Counsel's Office from those who associated with your work dating back to as early as a few weeks after your inception and the beginning of your work and continuing up to just

a few months ago.

All of these -- all of them have one thing in common: They were designed to weaken or to embarrass the President. Every single one. Never was it leaked that you'd found no evidence of collusion. Never was it leaked that the Steele dossier was a complete fantasy, nor that it was funded by the Hillary Clinton. I could go on and on.

Mr. Mueller, are you aware of anyone from your team having given advance knowledge of the raid on Roger Stone's home to any person or the press, including CNN?

Mr. Mueller. Well, I'm not going to talk about specifics. I will mention -- but talk for a moment about persons who become involved in an investigation and the understanding that, in a lengthy, thorough investigation, some persons will be under a cloud that should not be under a cloud.

And one of the reasons for emphasizing, as I have, the speed of an election -- or, not election -- the speed of an investigation is that so those persons who are disrupted as a result of their --

Mr. Stewart. I appreciate that, but I do have a series of questions.

Mr. Mueller. May -- with the result of that investigation.

Mr. Stewart. Thank you. And you're right, it is a cloud, and it's an unfair cloud for dozens of people.

But, to my point, are you aware of anyone providing information to the media regarding the raid on Roger Stone's home, including CNN?

Mr. Mueller. I'm not going to speak to that.

Mr. Stewart. Okay.

Mr. Mueller, you sent a letter dated March 27 to Attorney General Barr in which you claimed the Attorney General's memo to Congress did not fully capture the context of your report. You stated earlier today that response was not authorized.



Did you make any effort to determine who leaked this confidential letter?

Mr. Mueller. No, and I'm not certain -- this is the letter of March 27?

Mr. Stewart. Yes, sir.

Mr. Mueller. Okay. I'm not certain when it was publicized. I did know it was publicized, but I do not believe we would be responsible for the leak.

Mr. Stewart. Well --

Mr. Mueller. I do believe that we have done a good job in assuring that no leaks occur --

Mr. Stewart. We have 25 examples here of where you did not do a good job -- not you, sir; I'm not accusing you at all -- but where your office did not do a good job in protecting this information.

One more example. Do you know anyone who anonymously made claims to the press that Attorney General Barr's March 24 letter to Congress had been misrepresented or misrepresented the basis of your report?

Mr. Mueller. What was the question?

Mr. Stewart. Do you know who anonymously made claims to the press that Attorney General Barr's March 24 letter to Congress had misrepresented the findings of your report?

Mr. Mueller. No.

Mr. Stewart. Sir, given these examples as well as others, you must have realized that leaks were coming from someone associated with the Special Counsel's Office. What I'd like to ask is, did you --

Mr. Mueller. I do not believe that.

Mr. Stewart. Well, sir, this was your work. You're the only one -- your office is the only one who had information regarding this. It had to come from your office.

Putting that aside -- which leads me to my final question: Did you do anything about it?

Mr. Mueller. From the outset, we've undertaken to make certain that we minimize the possibility of leaks. And I think we were successful over the 2 years that we were in operation.

Mr. Stewart. Well, I wish you'd been more successful, sir. I think it was disruptive to the American people.

My time has expired. I yield back.

The Chairman. Mr. Quigley.

Mr. Quigley. Thank you, Mr. Chairman.

Director, thank you for being here. This, too, shall pass.

Earlier today and throughout the day, you have stated the policy that a seated President cannot be indicted, correct?

Mr. Mueller. Correct.

Mr. Quigley. And upon questioning this morning, you were asked, could a President be indicted after their service, correct?

Mr. Mueller. Yes.

Mr. Quigley. And your answer was that they could.

Mr. Mueller. They could.

The Chairman. Director, please speak into the microphone.

Mr. Mueller. I'm sorry. Thank you. They could.

Mr. Quigley. So the followup question that should be concerning is: What if a President serves beyond the statute of limitations?

Mr. Mueller. I don't know the answer to that one.

Mr. Quigley. Would it not indicate that if the statute of limitations on Federal

crimes such as this are 5 years that a President who serves a second term is therefore, under the policy, above the law?

Mr. Mueller. I'm not certain I would agree with the conclusion. I'm not certain that I can see the possibility that you suggest.

Mr. Quigley. But the statute doesn't toll. Is that correct?

Mr. Mueller. I don't know specifically.

Mr. Quigley. It clearly doesn't.

And I just want -- as the American public is watching this and perhaps learning about many of these for the first time, we need to consider that and that the other alternatives are perhaps all that we have.

But I appreciate your response.

Earlier in questioning, someone mentioned that -- it was a question involving whether anyone in the Trump political world publicized the emails, whether or not that was the case.

I just want to refer to Volume I, page 60, where we learn that Trump Jr. publicly tweeted a link to the leak of stolen Podesta emails in October of 2016. You're familiar with that?

Mr. Mueller. I am.

Mr. Quigley. So that would at least be a republishing of this information, would it not?

Mr. Mueller. I'm not certain I would agree with that.

Mr. Quigley. Director Pompeo assessed WikiLeaks, at one point, as a hostile intelligence service.

Given your law enforcement experience and your knowledge of what WikiLeaks did here and what they do generally, would you assess that to be accurate or something

similar? How would you assess what WikiLeaks does?

Mr. Mueller. Absolutely. And they are currently under indictment; Julian Assange is.

Mr. Quigley. But would it be fair to describe them as -- you would agree with Director Pompeo -- that's what he was when he made that remark -- that it's a hostile intelligence service, correct?

Mr. Mueller. Yes.

Mr. Quigley. If we could put up slide 6.

"This just came out. WikiLeaks! I love WikiLeaks!" Donald Trump, October 10, 2016.

"This WikiLeaks stuff is unbelievable. It tells you the inner heart, you gotta read it." Donald Trump, October 12, 2016.

"This WikiLeaks is like a treasure trove." Donald Trump, October 31, 2016.

"Boy, I love reading those WikiLeaks." Donald Trump, November 4, 2016.

Would any of those quotes disturb you, Mr. Director?

Mr. Mueller. I'm not certain I would say --

Mr. Quigley. How do you react to them?

Mr. Mueller. Well, it's -- "problematic" is an understatement in terms of what it displays in terms of giving some -- I don't know -- hope or some boost to what is and should be illegal activity.

Mr. Quigley. Volume I, page 59: "Donald Trump, Jr., had direct electronic communications with WikiLeaks during the campaign period."

"On October 3, 2016, WikiLeaks sent another direct message to Trump Jr., asking 'you guys' to help disseminate a link alleging candidate Clinton had advocated a drone to target Julian Assange. Trump Jr. responded that, quote, he already 'had done so.'"

Same question. This behavior, at the very least, disturbing?

Mr. Mueller. Disturbing and also subject to investigation.

Mr. Quigley. Could it be described as aid and comfort to a hostile intelligence service, sir?

Mr. Mueller. I wouldn't categorize it with any specificity.

Mr. Quigley. I yield the balance to the chairman, please.

The Chairman. I'm not sure I can make good use of 27 seconds, but, Director, I think you made it clear that you think it unethical, to put it politely, to tout a foreign service, like WikiLeaks, publishing stolen political documents in a Presidential campaign?

Mr. Mueller. Certainly calls for investigation.

The Chairman. Thank you, Director.

We're going to go now to Mr. Crawford. And then after Mr. Crawford's 5 minutes, we'll take a 5- or 10-minute break.

Mr. Crawford. Thank you, Mr. Chairman.

Thank you, Mr. Mueller, for being here.

Days after your appointment, Peter Strzok texted about his concern that there's, quote, "no big there there" in the Trump campaign investigation.

Did Strzok or anyone else who worked on the FBI's investigation tell you that around 10 months into the investigation the FBI still had no case for collusion?

Mr. Mueller. Who? Can you repeat that?

Mr. Crawford. Peter Strzok.

Mr. Mueller. And could you -- I'm sorry. Can you move the microphone up a little closer?

Mr. Crawford. Sure.

Mr. Mueller. Thank you.

Mr. Crawford. There's a quote attributed to Peter Strzok. He texted about his concern that there is, quote, "no big there there" in the Trump campaign investigation.

Did he or anyone else who worked on the FBI's investigation tell you that around 10 months into the investigation the FBI still had no case for collusion?

Mr. Mueller. No.

Mr. Crawford. Is the inspector general report correct that the text messages from Peter Strzok and Lisa Page's phones from your office were not retained after they left the Special Counsel's Office?

Mr. Mueller. Well, I don't -- it depends on what you're talking about. The investigation into those -- Peter Strzok went on for a period of time, and I am not certain what it encompasses. It may well have encompassed what you're adverting to.

Mr. Crawford. Okay.

Let me move on just real quickly. Did you ask the Department to authorize your office to investigate the origin of the Trump/Russia investigation?

Mr. Mueller. I'm not going to get into that. It goes to internal deliberations.

Mr. Crawford. So the circumstances surrounding the origin of the investigation have yet to be fully vetted then. I am certainly glad that Attorney General Barr and U.S. Attorney Durham are looking into this matter.

And, with that, I'd like to yield the balance of my time to Ranking Member Nunes.

Mr. Nunes. I thank the gentleman for yielding.

Mr. Mueller, I want to make sure you're aware of who Fusion GPS is. Fusion GPS is a political operations firm that was working directly for the Hillary Clinton campaign and the Democrat National Committee. They produced the dossier. So they paid Steele, who then went out and got the dossier.

And I know you don't want to answer any dossier questions, so I'm not going

there. But your report mentions Natalia Veselnitskaya 65 times. She meets in the Trump Tower -- it's this infamous Trump Tower meeting. It's in your report. You've heard many of the Democrats refer to it today.

The meeting was shorter than 20 minutes, I believe. Is that correct?

Mr. Mueller. I think what we have in our report reflects it was about that length.

Mr. Nunes. So do you know -- so Fusion GPS, the main actor at Fusion GPS, the president of the company, or the owner of the company, is a guy named Glenn Simpson, who's working for Hillary Clinton. Glenn Simpson -- do you know how many times Glenn Simpson met with Natalia Veselnitskaya?

Mr. Mueller. Myself? No.

Mr. Nunes. Would it surprise you that the Clinton campaign dirty-ops arm met with Natalia Veselnitskaya more times than the Trump campaign did?

Mr. Mueller. Well, this is an area that I'm not going to get into, as I indicated at the outset.

Mr. Nunes. Did you ever interview Glenn Simpson?

Mr. Mueller. I'm, again, going to pass on that.

Mr. Nunes. According to -- I'm going to change topics here. According to notes from the State Department official Kathleen Kavalec, Christopher Steele told her that former Russian intelligence head Trubnikov and Putin advisor Surkov were sources for the Steele dossier.

Now, knowing that these are -- not getting into whether these sources were real or not real, was there any concern that there could've been disinformation that was going from the Kremlin into the Clinton campaign and then being fed into the FBI?

Mr. Mueller. Well, as I said before, this is an area that I cannot speak to.

Mr. Nunes. Is that because you're -- it's not in the report or you're just -- or

because of an ongoing deliberations?

Mr. Mueller. Internal deliberations, other proceedings, and the like.

Mr. Nunes. Okay.

When Andrew Weissmann and Zainab Ahmad joined your team, were you aware that Bruce Ohr, a Department of Justice top official, directly briefed the dossier allegations to them in the summer of 2016?

Mr. Mueller. Again, I'm not going to speak to that issue.

Mr. Nunes. Okay.

Before you arrested George Papadopoulos in July of 2017, he was given \$10,000 in cash in Israel. Do you know who gave him that cash?

Mr. Mueller. Again, that's outside our ambit, and questions such as that should go to the FBI or the Department.

Mr. Nunes. But it involved your investigation.

Mr. Mueller. It involved persons involved in my investigation.

Mr. Nunes. Thank you, Mr. Chairman.

The Chairman. The committee will stand in recess for 5 or 10 minutes. Please, folks, remain in your seats, allow the Director and Mr. Zebley to exit the chamber.

[Recess.]

The Chairman. The committee will come to order.

Mr. Mueller. Thank you, sir.

The Chairman. Thank you, Director.

Mr. Swalwell, you're recognized.

Mr. Swalwell. Thank you.

Director Mueller, as a prosecutor, you would agree that if a witness or suspect lies or obstructs or tampers with witnesses or destroys evidence during an investigation that



generally that conduct can be used to show a consciousness of guilt. Would you agree with that?

Mr. Mueller. Yes.

Mr. Swalwell. Let's go through the different people associated with the Trump campaign and this investigation who lied to you and other investigators to cover up their disloyal and unpatriotic conduct.

If we could put exhibit 8 up.

Director Mueller, I'm showing you campaign chairman Paul Manafort; political advisor Roger Stone; deputy campaign manager Rick Gates; National Security Advisor Michael Flynn; Donald Trump's personal attorney, Michael Cohen; and foreign policy advisor George Papadopoulos.

These six individuals have each been charged, convicted, or lied to your office or other investigators. Is that right?

Mr. Mueller. Yes, although I look askance at Mr. Stone, because he is -- he is in a different case here in D.C.

Mr. Swalwell. So National Security Advisor Flynn lied about discussions with the Russian Ambassador related to sanctions. Is that right?

Mr. Mueller. That's correct.

Mr. Swalwell. Michael Cohen lied to this committee about Trump Tower Moscow. Is that correct?

Mr. Mueller. Yes.

Mr. Swalwell. George Papadopoulos, the President's senior foreign policy advisor, lied to the FBI about his communications about Russia's possession of dirt on Hillary Clinton. Is that right?

Mr. Mueller. Yes.

Mr. Swalwell. The President's campaign chairman, Paul Manafort, lied about meetings that he had with someone with ties to Russian intelligence. Is that correct?

Mr. Mueller. That's true.

Mr. Swalwell. And your investigation was hampered by Trump campaign officials' use of encryption communications. Is that right?

Mr. Mueller. We believe that to be the case.

Mr. Swalwell. You also believe to be the case that your investigation was hampered by the deletion of electronic messages. Is that correct?

Mr. Mueller. It would be, yes. And, generally, any case would be if those kinds of communications are used.

Mr. Swalwell. For example, you noted that deputy campaign manager Rick Gates, who shared internal campaign polling data with a person with ties to Russian intelligence at the direction of Manafort, that Mr. Gates deleted those communications on a daily basis. Is that right?

Mr. Mueller. I take your word -- I'd say I don't know specifically, but if it's in the report, then I support it.

Mr. Swalwell. That's right, Director. It's Volume I, page 136.

Mr. Mueller. Thank you.

Mr. Swalwell. In addition to that, other information was inaccessible because your office determined it was protected by attorney-client privilege. Is that correct?

Mr. Mueller. That is true.

Mr. Swalwell. That would include that you do not know whether communications between Donald Trump and his personal attorneys Jay Sekulow, Rudy Giuliani, and others discouraged witnesses from cooperating with the government. Is that right?

Mr. Mueller. I'm not going to talk to that.

Mr. Swalwell. That would also mean that you can't talk to whether or not pardons were dangled through the President's attorneys because -- the shield of attorney-client privilege.

Mr. Mueller. I'm not going to discuss that.

Mr. Swalwell. Did you want to interview Donald Trump, Jr.?

Mr. Mueller. I'm not going to discuss that.

Mr. Swalwell. Did you subpoena Donald Trump, Jr.?

Mr. Mueller. And I'm not going to discuss that.

Mr. Swalwell. Did you want to interview the President?

Mr. Mueller. Yes.

Mr. Swalwell. Director Mueller, on January 1, 2017, through March 2019, Donald Trump met with Vladimir Putin in person 6 times, called him 10 times, and exchanged 4 letters with him. Between that time period, how many times did you meet with Donald Trump?

Mr. Mueller. I'm not going to get into that.

Mr. Swalwell. He did not meet with you in person. Is that correct?

Mr. Mueller. He did not.

Mr. Swalwell. As a result of lies, deletion of text messages, obstruction, and witness tampering, is it fair to say that you were unable to fully assess the scope and scale of Russia's interference in the 2016 election and Trump's role in that interference?

Mr. Mueller. I'm not certain I would adopt that characterization in total. There may be pieces of it that are accurate, but not in total.

Mr. Swalwell. But you did state in Volume I, page 10, that "while this report embodies factual and legal determinations that the Office believes to be accurate and

complete to the greatest extent possible, given these identified gaps, the Office cannot rule out the possibility that the unavailable information would shed additional light." Is that correct?

Mr. Mueller. That is correct. We don't know what we don't know.

Mr. Swalwell. Why is it so important that witnesses cooperate and tell the truth in an investigation like this?

Mr. Mueller. Because the testimony of the witnesses goes to the heart of just about any criminal case you have.

Mr. Swalwell. Thank you.

And, Mr. Chairman, I'd yield back.

And thank you, Director Mueller.

The Chairman. Ms. Stefanik.

Ms. Stefanik. Thank you, Mr. Chairman.

Mr. Mueller, as special counsel, did you review documents related to the origin of the counterintelligence investigation into the Trump campaign?

Mr. Mueller. On occasion.

Ms. Stefanik. Was the Steele dossier one of those documents that was reviewed?

Mr. Mueller. And I can't discuss that case.

Ms. Stefanik. I'm just asking a process question. Have you read the Steele dossier?

Mr. Mueller. And, again, I'm not going to respond to that.

Ms. Stefanik. You were tasked, as special counsel, to investigate whether there was collusion between Russia and the Trump campaign associates to interfere with the 2016 election. And the FBI, we know, has relevant documents and information related

to the opening of the CI investigation. Were you and your team permitted to access all of those documents?

Mr. Mueller. And, again, I can't get into that investigative -- what we collected and what we're doing with investigation materials.

Ms. Stefanik. Let me ask it this way. Was there any limitation in your access to documents related to the counterintelligence investigation?

Mr. Mueller. That's such a broad question. I have real trouble answering it.

Ms. Stefanik. Did the Special Counsel's Office undertake any effort to investigate and verify or disprove allegations contained in the Steele dossier?

Mr. Mueller. Again, I can't respond.

Ms. Stefanik. The reason I'm asking, for the American public that is watching, it's apparent that the Steele dossier formed part of the basis to justify the FBI's counterintelligence investigation into Russian interference in the 2016 election. As we know, it was used to obtain a FISA warrant on Carter Page. This is why I'm asking these questions.

Did your office undertake any efforts to identify Steele's sources or sub-sources?

Mr. Mueller. Again, the same answer.

Ms. Stefanik. Were these tasks referred to any other agencies?

[2:35 p.m.]

Mr. Mueller. Again, I can't speak to it.

Ms. Stefanik. Did your office consider whether the Russian Government used Steele's sources to provide Steele with disinformation?

Mr. Mueller. Again, I can't speak to that.

Ms. Stefanik. I understand. I'm asking these questions just for the record, so thanks for your patience.

Shifting gears here, did any member of the Special Counsel's Office staff travel overseas as part of the investigation?

Mr. Mueller. Yes, but I can't go further than that.

Ms. Stefanik. I'm going to ask, to which countries?

Mr. Mueller. And I can't answer that.

Ms. Stefanik. Did they meet with foreign government officials?

Mr. Mueller. Again, it's out of our bailiwick.

Ms. Stefanik. Did they meet with foreign private citizens?

Mr. Mueller. Again, same response.

Ms. Stefanik. Did they seek information about a U.S. citizen or any U.S. citizens?

Mr. Mueller. Again, territory that I cannot go to.

Ms. Stefanik. Thank you for answering on the record. These are important questions for the American public, and we're hopeful that the IG is able to answer these questions.

I will yield the balance of my time to the ranking member.

Mr. Nunes. I thank the gentlelady for yielding.

Mr. Mueller, I want to go back to -- we started off with Joseph Mifsud, who is at

the center of this investigation. He appears in your report a dozen times or more. He really is the epicenter. He's at the origin of this. He's the man who supposedly knows about Clinton's emails.

You've seen on the screen, the Democrats have continually put up all the prosecutions that you made against Trump campaign officials and others, but I'm struggling to understand why you didn't indict Joseph Mifsud, who seems to be the man in the middle of all of this.

Mr. Mueller. Well, I think you understand that you cannot get into either classified or law enforcement information without a rationale for doing it. And I have said all I'm going to be able to say with regard to Mr. Mifsud.

Mr. Nunes. Were you aware of Kathleen Kavalec's involvement, that she had met with Mr. Steele? The State Department official.

Mr. Mueller. And, again, I can't respond to that question. It's outside my jurisdiction.

Mr. Nunes. Okay.

The Carter Page FISA warrant was re-upped three times. The last time it was re-upped was under your watch. So were you in the approval process of that last time that the Carter Page warrant was --

Mr. Mueller. Well, I can't speak specifically about that warrant, but if you ask was I in the approval chain, the answer is no.

Mr. Nunes. Okay. That's very helpful.

Thank you, Mr. Chairman. I yield back.

The Chairman. Mr. Castro.

Mr. Castro. Thank you, Chairman.

Thank you, Special Counsel Mueller, for your testimony and for your service to our

country.

Donald Trump, over the years, has surrounded himself with some very shady people, people that lied for him, people that covered up for him, people that helped him enrich himself. I want to talk specifically about one of those instances that's in your report.

Specifically, let's turn to the Trump Tower Moscow project, which you described in your report as a quote, "highly lucrative deal" for The Trump Organization. Is that right?

Mr. Mueller. I would have to look at the quote from the report, if you have it.

Mr. Castro. Sure. It's on Volume II, page 135. It's described as highly lucrative.

Mr. Mueller. Okay. I have it. Thank you, sir.

Mr. Castro. Yeah. No problem.

Your office prosecuted Michael Cohen -- and Michael Cohen was Donald Trump's lawyer -- for lying to this committee about several aspects of The Trump Organization's pursuit of the Trump Tower Moscow deal. Is that right?

Mr. Mueller. That's correct.

Mr. Castro. According to your report, Cohen lied to, quote, "minimize links between the project and Trump," unquote, and to, quote, "stick to the party line," unquote, in order not to contradict Trump's public message that no connection existed between Trump and Russia. Is that right?

Mr. Mueller. That's -- yes. That's correct.

Mr. Castro. Now, when you're talking about the party line here, the party line in this case --

Mr. Mueller. If I could interject, the one thing I should've said at the outset: If



it was in the report, then, consequently, I do believe it to be true.

Mr. Castro. Thank you.

The party line, in this case, was that the deal ended in January 2016. In other words, they were saying that the deal ended in January 2016, before the Republican primaries. In truth, though, the deal extended to June 2016, when Donald Trump was already the presumptive Republican nominee. Is that correct?

Mr. Mueller. That's correct.

Mr. Castro. The party line was also that Cohen discussed the deal with Trump only three times, when, in truth, they discussed it multiple times. Is that right?

Mr. Mueller. Also true, and the basis for -- and part of the basis for that plea that he entered for lying to this entity.

Mr. Castro. Thank you. And thank you for prosecuting that.

The party line was also that Cohen and Trump never discussed traveling to Russia during the campaign, when, in truth, they did discuss it. Is that right?

Mr. Mueller. That's accurate.

Mr. Castro. And the party line was that Cohen never received a response from the Kremlin to his inquiries about the Trump Tower Moscow deal. In fact, Cohen not only received a response from the Kremlin to his email but also had a lengthy conversation with a Kremlin representative who had a detailed understanding of the project. Is that right?

Mr. Mueller. If it's in the report, that is an accurate recitation of that piece of the report.

Mr. Castro. So you have the candidate Trump at the time saying he had no business dealings with Russia, his lawyer who was lying about it, and then the Kremlin who during that time was talking to President Trump's lawyer about the deal. Is that

right?

Mr. Mueller. I can't adopt your characterization.

Mr. Castro. Not only was Cohen lying on Trump's behalf, but so was the Kremlin. On August 30, 2017, 2 days after Cohen submitted his false statement to this committee claiming that he never received a response to his email to the Kremlin, Vladimir Putin's press secretary told reporters that the Kremlin left the email unanswered.

That statement by Putin's press secretary was false, wasn't it?

Mr. Mueller. I can't speak to that.

Mr. Castro. Although it was widely reported in the press.

Mr. Mueller. Again, I can't speak to that, particularly if it was dependent upon media sources.

Mr. Castro. But it was consistent with the lie that Cohen had made to the committee. Is that right?

Mr. Mueller. I'm not certain I could go that far.

Mr. Castro. So Cohen, President Trump, and the Kremlin were all telling the same lie.

Mr. Mueller. I defer to you on that. That's -- I can't get into the details.

Mr. Castro. Special Counsel Mueller, I want to ask you something that's very important to the Nation. Did your investigation evaluate whether President Trump could be vulnerable to blackmail by the Russians because the Kremlin knew that Trump and his associates lied about connections to Russia related to the Trump Tower deal?

Mr. Mueller. I can't speak to that.

Mr. Castro. I yield back, Chairman.

The Chairman. Mr. Hurd.

Mr. Hurd. Thank you, Mr. Chairman.

Director Mueller, you've been asked many times this afternoon about collusion, obstruction of justice, and impeachment, and the Steele dossier. And I don't think your answers are going to change if I ask you about those questions.

So I'm going to ask about a couple of press stories, because a lot of what the American people have received about this have been on press stories, and some of that has been wrong, and some of those press stories have been accurate.

On April 13, 2018, McClatchy reported that you had evidence Michael Cohen made a secret trip to Prague during the 2016 Presidential election. I think he told one of the committees here in Congress that that was incorrect. Is that story true?

Mr. Mueller. I can't -- well, I can't go into it.

Mr. Hurd. Gotcha.

On October 31, 2016, Slate published a report suggesting that a server at Trump Tower was secretly communicating with Russia's Alfa Bank, and then I quote, "akin to what criminal syndicates do."

Do you know if that story is true?

Mr. Mueller. Do not. Do not --

Mr. Hurd. You do not?

Mr. Mueller. -- know whether it's true.

Mr. Hurd. So did you not investigate these allegations which are suggestive of a potential Trump-Russia --

Mr. Mueller. Because I believe it not true doesn't mean it would not be investigated. It may well have been investigated. Although my belief at this point, it's not true.

Mr. Hurd. Good copy. Thank you.

As a former CIA officer, I want to focus on something I think both sides of the

political aisle can agree on -- that is, how do we prevent Russian intelligence and other adversaries from doing this again.

And after overseeing counterintelligence operations for 12 years as FBI Director and then investigating what the Russians have done in the 2016 election, you've seen tactics, techniques, and results of Russian intelligence operations.

Our committee made a recommendation that the FBI should improve its victim notification process when a person, entity, or campaign has fallen victim to an active-measures attack. Would you agree with this?

Mr. Mueller. It sounds like a worthwhile endeavor. I will tell you, though, that the ability of our intelligence agencies to work together in this arena is perhaps more important than that. And adopting whatever -- and I'm not that familiar with the legislation -- but whatever legislation will encourage us working together -- by "us," I mean the FBI, CIA, NSA, and the rest -- it should be pursued aggressively, early.

Mr. Hurd. Who do you think should be responsible within the Federal Government to counter disinformation?

Mr. Mueller. I'm no longer in the Federal Government, so I --

Mr. Hurd. But you've had a long, storied career, and I don't think there's anybody who better understands the threat that we are facing than you. Do you have an opinion as a former FBI officer?

Mr. Mueller. As to?

Mr. Hurd. As to who should be the coordinating point within the Federal Government on how to deal with disinformation.

Mr. Mueller. I don't want to wade in those waters.

Mr. Hurd. Good copy.

One of the most striking things in your report is that the Internet Research Agency

not only undertook a social media campaign in the U.S. but they were able to organize political rallies after the election.

Our committee issued a report and insight on saying that Russian active measures are growing with frequency and intensity and including their expanded use of groups such as the IRA, and these groups pose a significant threat to the United States and our allies in upcoming elections. Would you agree with that?

Mr. Mueller. Yes. In fact, one of the other areas that we have to look at are many more companies -- not companies -- many more countries are developing capability to replicate what the Russians have done.

Mr. Hurd. You alluded to making sure all the elements of the Federal Government should be working together. Do you have a suggestion on a strategy to do that, to counter this disinformation?

Mr. Mueller. Not overarching.

Mr. Hurd. In your investigation, did you think that this was a single attempt by the Russians to get involved in our election, or did you find evidence to suggest they will try to do this again?

Mr. Mueller. Oh, it wasn't a single attempt. They're doing it as we sit here. And they expect to do it during the next campaign.

Mr. Hurd. Director Mueller, I appreciate your time and indulging us here in multiple committees.

And I yield back to the ranking member if he has -- I yield back to the chairman.

The Chairman. Mr. Heck.

Mr. Heck. Director Mueller, I'd like to go to the motives behind the Trump campaign encouragement and acceptance of help during the election. Obviously, a clear motivation was to help them in what would turn out to be a very close election.

But there was another key motivation, and that was, frankly, the desire to make money.

I always try to remember what my dad, who never had the opportunity to go beyond the 8th grade, taught me, which is that I should never, ever underestimate the capacity of some people to cut corners and even more in order to worship and chase the almighty buck.

And this is important, because I think it, in fact, does go to the heart of why the Trump campaign was so unrelentingly intent on developing relationships with the Kremlin.

So let's quickly revisit one financial scheme we just discussed, which was the Trump Tower in Moscow. We indicated earlier that it was a lucrative deal. Trump, in fact, stood, he and his company, to earn many millions of dollars on that deal, did they not, sir?

Mr. Mueller. True.

Mr. Heck. And Cohen, Mr. Cohen, his attorney, testified before this committee that President Trump believed the deal required Kremlin approval. Is that consistent with what he told you?

Mr. Mueller. I'm not certain whether it's Mr. Trump himself or others associated with that enterprise that had discussed the necessity of having the input from the state, meaning the Russian Government, in order for it to go forward successfully.

Mr. Heck. Isn't it also true that Donald Trump viewed his Presidential campaign, as he told top campaign aides, that the campaign was an infomercial for The Trump Organization and his properties?

Mr. Mueller. I'm not familiar with that.

Mr. Heck. Then let's turn to Trump campaign chair Paul Manafort. Did, in fact, your investigation find any evidence that Manafort intended to use his position as

Trump's campaign chair for his own personal financial benefit?

Mr. Mueller. I would say there was some indication of that, but I won't go further.

Mr. Heck. I think you'll find it on page 135 of Volume I.

During the transition, Trump's son-in-law, Jared Kushner, met with Sergey Gorkov, the head of a Russian-owned bank that was under -- is under U.S. sanctions. And according to the head of the bank, he met with Kushner in his capacity as CEO of Kushner Companies to discuss business opportunities.

Is that correct, sir?

Mr. Mueller. I'm not certain --

Mr. Heck. It was --

Mr. Mueller. I'm not certain about that. Let me just put it that way.

Mr. Heck. It was asserted thusly in your report, Volume I, on pages 161 and 162. Your report notes that, at the time, Kushner Companies were trying to renegotiate a billion-, with a "B," a billion-dollar lease of their flagship building at 666 5th Avenue, correct?

Mr. Mueller. I am not familiar with those financial arrangements.

Mr. Heck. Also on page 162 where Kushner Companies, it was asserted, had debt obligations coming due on the company.

Erik Prince, a supporter close to Trump --

Mr. Mueller. A supporter -- I'm sorry.

Mr. Heck. -- campaign and administrative --

Mr. Mueller. I just -- a supporter. I was --

Mr. Heck. Yes. He met in the Seychelles during the transition with Kirill Dmitriev, who was the head of a sanctioned Russian Government investment arm which

had close ties to Vladimir Putin, correct, sir?

Mr. Mueller. Yes.

Mr. Heck. Your investigation determined that Mr. Prince had not known nor conducted business with Dmitriev before Trump won the election, correct?

Mr. Mueller. Well, I defer to the report on that.

Mr. Heck. Yet -- it does. And yet Prince, who had connections to top Trump administration officials, met with Dmitriev during the transition period to discuss business opportunities, among other things.

But it wasn't just Trump and his associates who were trying to make money off this deal, nor hide it, nor lie about it. Russia was too. That was the whole point, to gain relief from sanctions which would hugely benefit their incredibly wealthy oligarchs.

For example, sanctions relief was discussed at that June 9 meeting in the Trump Tower, was it not, sir?

Mr. Mueller. Yes. But it was not a main subject for discussion.

Mr. Heck. Trump administration National Security Advisor-designate Michael Flynn also discussed sanctions in a secret conversation with the Russian Ambassador, did he not?

Mr. Mueller. Correct.

Mr. Heck. So, to summarize, Donald Trump, Michael Cohen, Paul Manafort, Jared Kushner, Erik Prince, and others in the Trump orbit all tried to use their connections with The Trump Organization to profit from Russia, which was openly seeking relief from sanctions. Is that true, sir?

Mr. Mueller. I'm not -- I'm not certain I can adopt what you articulate.

Mr. Heck. Well, I will. And I'd further assert that was not only dangerous, it was un-American. Greed corrupts. Greed corrupts, and it is a terrible foundation for



developing American foreign policy.

The Chairman. Mr. Ratcliffe.

Mr. Ratcliffe. Director Mueller, given your constraints on what you're able or allowed to answer with respect to counterintelligence matters or other matters that are currently open and under investigation, you're not going to be able to answer my remaining questions.

So I thank you for your courtesies in the answers that you have given to my prior questions, and I do thank you for your extraordinary career and record of service, and yield back the balance of my time to the ranking member.

Mr. Mueller. Thank you.

Mr. Nunes. Thank you, Mr. Ratcliffe.

And, Mr. Mueller, let me associate my words with Mr. Ratcliffe.

I've got a few more questions. I want to clean up a little bit about the Erik Prince Seychelles meeting.

So Erik Prince testified before this committee that he was surveilled by the U.S. Government and that information from this surveillance was leaked to the press. Did you investigate whether Prince was surveilled and whether classified information on him was illegally leaked to the media?

Mr. Mueller. Did you say "did you" or "will you"?

Mr. Nunes. Well, I know you can't. I know you're not going to join --

Mr. Mueller. So I can't discuss it either way.

Mr. Nunes. -- back up in the ranks. But did you refer -- were you aware that -- you know, Prince has made these allegations that he was surveilled. He's concerned that there were leaks about the surveillance. Did you make any referrals about these leaks?

Mr. Mueller. No, and I can't get into discussion on it.

Mr. Nunes. Okay.

I also want to -- General Flynn. I know you came after the leak of his phone call with the Russian Ambassador. Your time at FBI, it would be a major scandal, wouldn't it, for the leak of the National Security Advisor and anyone in any government --

Mr. Mueller. I can't -- I can't adopt that hypothesis.

Mr. Nunes. Did your report name any people who were acting as U.S. Government informants or sources without disclosing that fact?

Mr. Mueller. I can't answer that.

Mr. Nunes. Okay.

On Volume I, page 133 of your report, you state that Konstantin Kilimnik has ties to Russian intelligence. His name came up quite often today. But your report omits to mention that Kilimnik has long-term relationships with U.S. Government officials, including our own State Department.

Mr. Mueller. I can't be -- I can't get into that.

Mr. Nunes. I know it's not in the report, but, you know, if Kilimnik is being used in the report to say that he was possibly some type of Russian agent, then I think it is important for this committee to know if Kilimnik has ties to our own State Department, which it appears that he does.

Mr. Mueller. Again, it's the same territory that I'm loathe to get into.

Mr. Nunes. Okay.

You were asked this earlier about Trump attorney John Dowd, that pieces of his phone call were omitted from the report. It was what Mr. Dowd calls exculpatory evidence.

Are you concerned about --

Mr. Mueller. I'm not certain I would agree with that characterization.

Mr. Nunes. Okay.

Mr. Mueller. I think I said that before.

Mr. Nunes. Yes.

An American citizen from the Republic of Georgia, who your report misidentifies as a Russian, claims that your report omitted parts of a text message he had with Michael Cohen about stopping the flow of compromising tapes of Donald Trump. In the omitted portions, he says he did not know what the tapes actually showed.

Was that portion of the exchange left out of the report for a reason?

Mr. Mueller. No. We got an awful lot into the report, but we did not get every intersection or conversation and the like. So I am not familiar with that particular episode you're talking about.

Mr. Nunes. Thank you, Mr. Mueller.

And thank you, Mr. Chairman.

The Chairman. Mr. Welch.

Mr. Welch. Director Mueller, did you find there was no collusion between the Trump campaign and Russia?

Mr. Mueller. Well, we don't use the word "collusion." I think the word we usually use is the -- well, not "collusion" but one of the other terms that fills in when "collusion" is not used.

In any event, we decided not to use the word "collusion" inasmuch as it has no relevance to the criminal law arena.

Mr. Welch. The term is "conspiracy" that you prefer to use?

Mr. Mueller. That's it, "conspiracy." Exactly right.

Mr. Welch. You help me, I'll help you.

Mr. Mueller. Thank you.

Mr. Welch. It's an agreement. Thank you.

And, in fact, you had to then make a charging decision after your investigation where, unless there was enough evidence to prove beyond a reasonable doubt, you wouldn't make a charge, correct?

Mr. Mueller. Generally, that's the case.

Mr. Welch. But making that decision does not mean your investigation failed to turn up evidence of conspiracy.

Mr. Mueller. Absolutely correct.

Mr. Welch. And, in fact, I will go through some of the significant findings that your exhaustive investigation made.

You found, as I understand it, that from May 2016 until the end of the campaign, campaign chairman Mr. Manafort gave private polling information to Russian agents, correct?

Mr. Mueller. Correct.

The Chairman. Could you speak into the microphone?

Mr. Mueller. Yep, I will. My apologies.

Mr. Welch. Thank you.

And your investigation found that, in June 2016, Donald Trump, Jr., made an arrangement to meet at Trump Tower, along with Jared Kushner and others, expecting to receive dirt on the Hillary Clinton campaign, correct?

Mr. Mueller. Correct.

Mr. Welch. And you found in your investigation that, on July 27, candidate Trump called on Russia to hack Hillary Clinton's emails, something that for the first time they did about 5 hours later, correct?

Mr. Mueller. That's correct.

Mr. Welch. And you also found that, on August 2, Mr. Manafort met with a person tied to Russian intelligence, Mr. Kilimnik, and gave him internal campaign strategy, aware that Russia was intending to do a misinformation social media campaign, correct?

Mr. Mueller. I'm not certain of the tie there.

Mr. Welch. But the fact of that meeting you agree with?

Mr. Mueller. The fact that the meeting took place is accurate.

Mr. Welch. And your investigation, as I understand it, also found that, in late summer of 2016, the Trump campaign in fact devised its strategy and messaging around WikiLeaks releases of materials that were stolen from the Democratic National Committee, correct?

Mr. Mueller. Is that from the report?

Mr. Welch. Yes.

Mr. Mueller. Yes.

Mr. Welch. It's according to Mr. Gates.

Mr. Mueller. Yes.

Mr. Welch. Yes. Thank you.

And you also talked earlier about the finding in your investigation that, in September and October of 2016, Donald Trump, Jr., had email communications with WikiLeaks, now indicted, about releasing information damaging to the Clinton campaign, correct?

Mr. Mueller. True.

Mr. Welch. All right.

So I understand you made the decision, a prosecutorial decision, that this would not rise to proof beyond a reasonable doubt. But I ask if you share my concern. And

my concern is: Have we established a new normal from this past campaign that is going to apply to future campaigns so that if any one of us running for the U.S. House, any candidate for the U.S. Senate, any candidate for the Presidency of the United States, aware that a hostile foreign power is trying to influence an election, has no duty to report that to the FBI or other authorities --

Mr. Mueller. Well, I hope --

Mr. Welch. -- that -- go ahead.

Mr. Mueller. Well, I hope this is not the new normal, but I fear it is.

Mr. Welch. -- and would, in fact, have the ability without fear of legal repercussion to meet with agents of that foreign entity hostile to the American election?

Mr. Mueller. I'm sorry. What is the question?

Mr. Welch. Is that an apprehension that you share with me?

Mr. Mueller. Yes.

Mr. Welch. And that there would be no repercussions whatsoever to Russia if they did this again. And as you stated earlier, as we sit here, they're doing it now. Is that correct?

Mr. Mueller. You're absolutely right.

Mr. Welch. Do you have any advice to this Congress as to, together, what we should do to protect our electoral system and accept responsibility on our part to report to you or your successor when we're aware of hostile foreign engagement in our elections?

Mr. Mueller. I would say, a basis -- first line of defense, really, is the ability of the various agencies who have some piece of this to not only share information but share expertise, share targets, and use the full resources that we have to address this problem.

Mr. Welch. Thank you, Director Mueller.

I yield back.

The Chairman. Mr. Maloney.

Mr. Maloney. Mr. Mueller, thank you. I know it's been a long day. And I want to make clear how much respect I have for your service and for your extraordinary career, and I want you to understand my questions in that context, sir.

I'm going to be asking you about Appendix C to your report and, in particular, the decision not to do a sworn interview with the President. It's really the only subject I want to talk to you about, sir.

Why didn't you subpoena the President?

Mr. Mueller. Well, at the outset, after we took over and initiated the investigation --

Mr. Maloney. If I could ask you to speak into the mike.

Mr. Mueller. Yeah. Of course.

At the outset, after we took over the investigation and began it and pursued it, quite obviously, one of the things we anticipated wanting to accomplish in that is having the interview of the President. We negotiated with him for a little over a year, and I think what you adverted to in the appendix lays out our expectations as a result of those negotiations.

But, finally, when we were almost towards the end of our investigation and we'd had little success in pushing to get the interview of the President, we decided that we did not want to exercise the subpoena powers because of the necessity of expediting the end of the investigation.

Mr. Maloney. Was that -- excuse me. Did you --

Mr. Mueller. I was going to say, the expectation was, if we did subpoena the President, he would fight the subpoena and we would be in the midst of the investigation

for a substantial period of time.

Mr. Maloney. Right.

But as we sit here, you've never had an opportunity to ask the President in-person questions under oath. And so, obviously, that must have been a difficult decision. And you're right; Appendix C lays that out. And, indeed, I believe you describe the in-person interview as vital. That's your word.

And, of course, you make clear you had the authority and the legal justification to do it. As you point out, you waited a year, you put up with a lot of negotiations, you made numerous accommodations, which you lay out, so that he could prepare and not be surprised. I take it you were trying to be fair to the President.

And, by the way, you were going to limit the questions, when you got to written questions, to Russia only. And, in fact, you did go with written questions after about 9 months, sir, right? And the President responded to those.

And you have some hard language for what you thought of those responses. What did you think of the President's written responses, Mr. Mueller?



RPTR FORADORI

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[3:05 p.m.]

Mr. Mueller. Certainly not as useful as the interview would be.

Mr. Maloney. In fact, you pointed out, and by my count, there were more than 30 times when the President said he didn't recall, he didn't remember, no independent recollection, no current recollection.

And I take it by your answer that it wasn't as helpful. That's why you used words like "incomplete," "imprecise," "inadequate," "insufficient." Is that a fair summary of what thought of those written answers?

Mr. Mueller. That is a fair summary. And I presume that comes from the report.

Mr. Maloney. And yet, sir -- and I ask this respectfully -- by the way, the President didn't ever claim the Fifth Amendment, did he?

Mr. Mueller. I'm not going to talk to that.

Mr. Maloney. Well, from what I can tell, sir, at one point it was vital and then at another point it wasn't vital. And my question to you is, why did it stop being vital?

And I can only think of three explanations. One is that somebody told you you couldn't do it. But nobody told you you couldn't subpoena the President. Is that right?

Mr. Mueller. No. We understood we could subpoena the President.

Mr. Maloney. Rosenstein didn't tell you, Whitaker didn't tell you, Barr didn't tell you you couldn't --

Mr. Mueller. We could serve a subpoena.

Mr. Maloney. So the only other explanation -- well, there's two others, I guess:

one, that you just flinched, that you had the opportunity to do it and you didn't do it.

But, sir, you don't strike me as the kind of guy who flinches.

Mr. Mueller. I'd hope not.

Mr. Maloney. Well, then the third explanation -- I hope not, too, sir. And the third explanation I can think of is that you didn't think you needed it.

And, in fact, what caught my eye was page 13 of Volume II, where you said, in fact, you had a substantial body of evidence. And you cite a bunch of cases there, don't you, about how you often have to prove intent to obstruct justice without an in-person interview. That's the kind of nature of it. And you used terms like "a substantial body of evidence," "significant evidence" of the President's intent.

So my question, sir, is did you have sufficient evidence of the President's intent to obstruct justice, and is that why you didn't do the interview?

Mr. Mueller. Well, there's a balance -- in other words, how much evidence you have that satisfy the last element against how much time are you willing to spend in the courts litigating the interview of the President.

Mr. Maloney. And, in this case, you felt that you had enough evidence of the President's intent.

Mr. Mueller. We had to make a balanced decision in terms of how much evidence we had compared to the length of time it would take to do the --

Mr. Maloney. And, sir, because I have limited time, you thought that if you gave it to the Attorney General or to this Congress that there was sufficient evidence, that it was better than that delay.

Mr. Mueller. Can you state that again?

Mr. Maloney. Well, that it was better than the delay to present the sufficient evidence -- your term -- of the President's intent to obstruct justice to the Attorney

General and to this committee. Isn't that why you didn't do the interview?

Mr. Mueller. No. The reason we didn't do the interview is because of the length of time that it would take to resolve the issues attendant to that.

Mr. Maloney. Thank you, sir.

The Chairman. Mrs. Demings.

Mrs. Demings. Thank you so much, Mr. Chairman.

And, Director Mueller, thank you so much for being a person of honor and integrity. Thank you for your service to the Nation. We are certainly better for it.

Director Mueller, I, too, want to focus on the written responses that the President did provide and the continued efforts to lie and cover up what happened during the 2016 election.

Were the President's answers submitted under oath?

Mr. Mueller. Yes. Yes.

Mrs. Demings. Thank you. They were.

Were these all the answers your office wanted to ask the President about Russian interference in the 2016 election?

Mr. Mueller. No, not necessarily.

Mrs. Demings. So there were other --

Mr. Mueller. Yes.

Mrs. Demings. -- questions that you wanted to answer.

Did you analyze his written answers on Russian interference to draw conclusions about the President's credibility?

Mr. Mueller. No. It was perhaps one of the factors, but nothing more than that.

Mrs. Demings. It was one of the factors. So what did you determine about the

President's credibility?

Mr. Mueller. And that I can't get into.

Mrs. Demings. Director Mueller, I know based on your decades of experience you've probably had an opportunity to analyze the credibility of countless witnesses, but you weren't able to do so with this witness?

Mr. Mueller. Well, with every witness, particularly a leading witness, one assesses the credibility day by day, witness by witness, document by document. And that's what happened in this case. So we started with very little, and, by the end, we ended up with a fair amount. My -- yeah, a fair amount.

Mrs. Demings. Thank you. Well, let's go through some of the answers to take a closer look at his credibility, because it seems to me, Director Mueller, that his answers were not credible at all.

Did some of President Trump's incomplete answers relate to Trump Tower Moscow?

Mr. Mueller. Yes.

Mrs. Demings. For example, did you ask the President whether he had at any time directed or suggested that discussions about Trump Moscow project should cease?

Mr. Mueller. Should what?

Mrs. Demings. Cease.

Mr. Mueller. Do you have a citation?

Mrs. Demings. Yes. We're still in Appendix C, section 1-7.

Mr. Mueller. The first page?

Mrs. Demings. Uh-huh. It says: "The President 'did not answer whether he had at any time directed or suggested that discussions about the Trump Moscow project should cease...but he has since made public comments about that topic.'"

Mr. Mueller. Okay. And the question was?

Mrs. Demings. Did the President -- let me go on to the next. Did the President fully answer that question in his written statement to you about the Trump Moscow project ceasing? Again, in Appendix C.

Mr. Mueller. And can you direct me to the particular paragraph you're adverting to?

Mrs. Demings. It would be Appendix C, C-1. But let me move forward.

Nine days after he submitted his written answers, didn't the President say publicly that he, quote, "decided not to do the project," unquote? And that is in your report.

Mr. Mueller. I'd ask you, if you would, to point out the particular paragraph that you're focused on.

Mrs. Demings. Okay. We can move on.

Did the President answer your followup questions? According to the report, there were followup questions because of the President's incomplete answers about the Moscow project. Did the President answer your followup questions, either in writing or orally?

And we're now in --

Mr. Mueller. No.

Mrs. Demings. -- Volume II, page 150 through 151.

Mr. Mueller. No.

Mrs. Demings. He did not.

In fact, there were many questions that you asked the President that he simply didn't answer. Isn't that correct?

Mr. Mueller. True.

Mrs. Demings. And there were many answers that contradicted other evidence

you had gathered during the investigation. Isn't that correct --

Mr. Mueller. Yes.

Mrs. Demings. -- Director Mueller?

Director Mueller, for example, the President, in his written answers, stated he did not recall having advance knowledge of WikiLeaks releases. Is that correct?

Mr. Mueller. I think that's what he said.

Mrs. Demings. But didn't your investigation uncover evidence that the President did, in fact, have advance knowledge of WikiLeaks public releases of emails damaging to his opponent?

Mr. Mueller. And I can't get into that area.

Mrs. Demings. Did your investigation determine after very careful vetting of Rick Gates and Michael Cohen that you found them to be credible?

Mr. Mueller. That we found the President to be credible?

Mrs. Demings. That you found Gates and Cohen to be credible in their statements about WikiLeaks?

Mr. Mueller. Those areas I'm not going to discuss.

Mrs. Demings. Okay.

Could you say, Director Mueller, that the President was credible?

Mr. Mueller. I can't answer that question.

Mrs. Demings. Director Mueller, isn't it fair to say that the President's written answers were not only inadequate and incomplete, because he didn't answer many of your questions, but where he did, his answers showed that he wasn't always being truthful?

Mr. Mueller. There I would say generally.

Mrs. Demings. Generally.

Director Mueller, it's one thing for the President to lie to the American people about your investigation, falsely claiming that you found no collusion or no obstruction. But it's something else altogether for him to get away with not answering your questions and lying about them. And as a former law enforcement officer of almost 30 years, I find that a disgrace to our criminal justice system.

Thank you so --

Mr. Mueller. Thank you, ma'am.

Mrs. Demings. -- much.

I yield back to the chairman.

The Chairman. Mr. Krishnamoorthi.

Mr. Krishnamoorthi. Director Mueller, thank you for your devoted service to your country.

Earlier today, you described your report as detailing a criminal investigation, correct?

Mr. Mueller. Yes.

Mr. Krishnamoorthi. Director, since it was outside the purview of your investigation, your report did not reach counterintelligence conclusions regarding the subject matter of your report.

Mr. Mueller. That's true.

Mr. Krishnamoorthi. For instance, since it was outside your purview, your report did not reach counterintelligence conclusions regarding any Trump administration officials who might potentially be vulnerable to compromise or blackmail by Russia, correct?

Mr. Mueller. Those decisions probably were made in a counter -- in the FBI.

Mr. Krishnamoorthi. But not in your report, correct?

Mr. Mueller. Not in our report. We advert to the counterintelligence goals of our investigation, which were secondary to any criminal wrongdoing that we could find.

Mr. Krishnamoorthi. Let's talk about one administration official in particular -- namely, President Donald Trump. Other than Trump Tower Moscow, your report does not address or detail the President's financial ties or dealings with Russia, correct?

Mr. Mueller. Correct.

Mr. Krishnamoorthi. Similarly, since it was outside your purview, your report does not address the question of whether Russian oligarchs engaged in money laundering through any of the President's businesses, correct?

Mr. Mueller. Correct.

Mr. Krishnamoorthi. And, of course, your office did not obtain the President's tax returns, which could otherwise show foreign financial sources, correct?

Mr. Mueller. I'm not going to speak to that. I'm not going to speak to that.

Mr. Krishnamoorthi. In July 2017, the President said his personal finances were off limits or outside the purview of your investigation, and he drew a, quote/unquote, "red line" around his personal finances.

Were the President's personal finances outside the purview of your investigation?

Mr. Mueller. I'm not going to get into that.

Mr. Krishnamoorthi. Were you instructed by anyone not to investigate the President's personal finances?

Mr. Mueller. No.

Mr. Krishnamoorthi. Mr. Mueller, I'd like to turn your attention to counterintelligence risks associated with lying.

Individuals can be subject to blackmail if they lie about their interactions with



foreign countries, correct?

Mr. Mueller. True.

Mr. Krishnamoorthi. For example, you successfully charged former National Security Advisor Michael Flynn of lying to Federal agents about his conversations with Russian officials, correct?

Mr. Mueller. Correct.

Mr. Krishnamoorthi. Since it was outside the purview of your investigation, your report did not address how Flynn's false statements could pose a national security risk because the Russians knew the falsity of those statements, right?

Mr. Mueller. I cannot get into that mainly because there are many elements of the FBI that are looking at different aspects of that issue.

Mr. Krishnamoorthi. Currently?

Mr. Mueller. Currently.

Mr. Krishnamoorthi. Thank you.

As you noted in Volume II of your report, Donald Trump repeated five times in one press conference, Mr. Mueller, in 2016, quote, "I have nothing to do with Russia."

Of course, Michael Cohen said Donald Trump was not being truthful because, at this time, Trump was attempting to build Trump Tower Moscow.

Your report does not address whether Donald Trump was compromised in any way because of any potential false statements that he made about Trump Tower Moscow, correct?

Mr. Mueller. I think that's right. I think that's right.

Mr. Krishnamoorthi. Director Mueller, I want to turn your attention to a couple other issues.

You've served as FBI Director during three Presidential elections, correct?

Mr. Mueller. Yes.

Mr. Krishnamoorthi. And during those three Presidential elections, you have never initiated an investigation at the FBI looking into whether a foreign government interfered in our elections the same way you did in this particular instance, correct?

Mr. Mueller. I would say I, personally, no. But the FBI, quite obviously, has the -- how you defense an attack such as the Russians undertook in 2016.

Mr. Krishnamoorthi. Now, Director Mueller, is there any information you'd like to share with this committee that you have not so far today?

Mr. Mueller. Boy, that's a broad question. And it'd take me a while to get an answer to it, but I'll say: No.

Mr. Krishnamoorthi. Mr. Mueller, you said that every American should pay very close attention to the systematic and sweeping fashion in which the Russians interfered in our democracy.

Are you concerned that we are not doing enough currently to prevent this from happening again?

Mr. Mueller. Well, I'll speak generally and what I said in my opening statement this morning and here, that, no, much more needs to be done in order to protect against this intrusion, not just by the Russians but others as well.

Mr. Krishnamoorthi. Thank you, Director.

The Chairman. We have two 5-minute periods remaining, Mr. Nunes and myself.

Mr. Nunes, you are recognized.

Mr. Nunes. Mr. Mueller, it's been a long day for you. And you've had a long, great career. I want to thank you for your longtime service, starting in Vietnam, obviously in the U.S. Attorney's Office, Department of Justice, and the FBI. And I want to thank you for doing something you didn't have to do; you came here upon your own

free will. And we appreciate your time today.

With that, I yield back.

Mr. Mueller. Thank you, sir.

The Chairman. Director Mueller, I want to, to close out my questions, turn to some of the exchange you had with Mr. Welch a bit earlier. I'd like to see if we can broaden the aperture at the end of the hearing.

From your testimony today, I gather that you believe that knowingly accepting foreign assistance during a Presidential campaign is an unethical thing to do.

Mr. Mueller. And a crime --

The Chairman. And a crime.

Mr. Mueller. -- in certain circumstances. Yes.

The Chairman. And to the degree it undermines our democracy and our institutions, we can agree that it's also unpatriotic.

Mr. Mueller. True.

The Chairman. And wrong.

Mr. Mueller. True.

The Chairman. The standard of behavior for a Presidential candidate or any candidate, for that matter, shouldn't be merely whether something is criminal; they should be held to a higher standard. You would agree?

Mr. Mueller. I will not get into that because it goes to the standards to be applied by other institutions besides ours.

The Chairman. Well, I'm just referring to ethical standards. We should hold our elected officials to a standard higher than mere avoidance of criminality, shouldn't we?

Mr. Mueller. Absolutely.

The Chairman. You have served this country for decades. You've taken an oath to defend the Constitution. You hold yourself to a standard of doing what's right.

Mr. Mueller. I would hope.

The Chairman. You have. I think we can all see that. And befitting the times, I'm sure your reward will be unending criticism. But we are grateful.

The need to act in an ethical manner is not just a moral one but, when people act unethically, it also exposes them to compromise, particularly in dealing with foreign powers. Is that true?

Mr. Mueller. True.

The Chairman. Because when someone acts unethically in connection with a foreign partner, that foreign partner can later expose their wrongdoing and extort them?

Mr. Mueller. True.

The Chairman. And that conduct, that unethical conduct, could be of a financial nature if you have a financial motive or an illicit business dealing. Am I right?

Mr. Mueller. Yes.

The Chairman. But it can also just involve deception. If you're lying about something that can be exposed, then you can be blackmailed.

Mr. Mueller. Also true.

The Chairman. In the case of Michael Flynn, he was secretly doing business with Turkey, correct?

Mr. Mueller. Yes.

The Chairman. And that could open him up to compromise, that financial relationship?

Mr. Mueller. I presume.

The Chairman. He also lied about his discussions with the Russian Ambassador.

And since the Russians were on the other side of that conversation, they could've exposed that, could they not?

Mr. Mueller. Yes.

The Chairman. If a Presidential candidate was doing business in Russia and saying he wasn't, Russians could expose that too, could they not?

Mr. Mueller. I leave that to you.

The Chairman. Well, let's look at Dmitry Peskov, the spokesperson for the Kremlin, someone that the The Trump Organization was in contact with to make that deal happen.

Your report indicates that Michael Cohen had a long conversation on the phone with someone from Dmitry Peskov's office. Presumably the Russians could record that conversation, could they not?

Mr. Mueller. Yes.

The Chairman. And so, if Candidate Trump was saying "I have no dealings with the Russians" but the Russians had a tape recording, they could expose that, could they not?

Mr. Mueller. Yes.

The Chairman. That's the stuff of counterintelligence nightmares, is it not?

Mr. Mueller. Well, it has to do with counterintelligence and the need for a strong counterintelligence entity.

The Chairman. It does indeed.

And when this was revealed, that there were these communications notwithstanding the President's denials, the President was confronted about this, and he said two things: first of all, "That's not a crime." But I think you and I have already agreed that that shouldn't be the standard, right, Mr. Mueller?

Mr. Mueller. True.

The Chairman. And the second thing he said was, "Why should I miss out on all those opportunities?" I mean, why indeed, merely running a Presidential campaign, why should you miss out on making all that money, was the import of his statement.

Were you ever able to ascertain whether Donald Trump still intends to build that tower when he leaves office?

Mr. Mueller. Was that a question, sir?

The Chairman. Yes. Were you able to ascertain -- because he wouldn't answer your questions completely -- whether or if he ever ended that desire to build that tower?

Mr. Mueller. I'm not going to speculate on that.

The Chairman. If the President was concerned that if he lost his election, he didn't want to miss out on that money, might he have the same concern about losing his reelection and --

Mr. Mueller. Again --

The Chairman. -- missing out on that money?

Mr. Mueller. -- speculation.

The Chairman. The difficulty with this, of course, is we are all left to wonder whether the President is representing us or his financial interests.

That concludes my questions.

Mr. Nunes, do you have any concluding remarks?

Mr. Nunes. I don't.

The Chairman. Director Mueller, let me close by returning to where I began. Thank you for your service, and thank you for leading this investigation.

The facts you set out in your report and have elucidated here today tell a disturbing tale of a massive Russian intervention in our election, of a campaign so eager

to win, so driven by greed that it was willing to accept the help of a hostile foreign power in a Presidential election decided by a handful of votes in a few key States.

Your work tells of a campaign so determined to conceal their corrupt use of foreign help that they risked going to jail by lying to you, to the FBI, and to Congress about it. And, indeed, some have gone to jail over such lies.

And your work speaks of a President who committed countless acts of obstruction of justice that, in my opinion and that of many other prosecutors, had it been anyone else in the country, they would've been indicted.

Notwithstanding the many things you have addressed today and in your report, there were questions you could not answer given the constraints you're operating under.

You would not tell us whether you would've indicted the President but for the OLC opinion that you could not. And so the Justice Department will have to make that decision when the President leaves office, both as to the crime of obstruction of justice and as to the campaign finance fraud scheme that Individual 1 directed and coordinated and for which Michael Cohen went to jail.

You would not tell us whether the President should be impeached, nor did we ask you, since it is our responsibility to determine the proper remedy for the conduct outlined in your report. Whether we decide to impeach the President in the House or we do not, we must take any action necessary to protect the country while he is in office.

You would not tell us the results or whether other bodies looked into Russian compromise in the form of money laundering, so we must do so.

You would not tell us whether the counterintelligence investigation revealed whether people still serving within the administration pose a risk of compromise and should never have been given a security clearance, so we must find out.

We did not bother to ask whether financial inducements from any Gulf nations

were influencing U.S. policy since it is outside the four corners of your report, and so we must find out.

But one thing is clear from your report, your testimony, from Director Wray's statements yesterday: The Russians massively intervened in 2016, and they are prepared to do so again in voting that is set to begin a mere 8 months from now. The President seems to welcome the help again, and so we must make all efforts to harden our elections infrastructure, to ensure there is a paper trail for all voting, to deter the Russians from meddling, to discover it when they do, to disrupt it, and to make them pay.

Protecting the sanctity of our elections begins, however, with the recognition that accepting foreign help is disloyal to our country, unethical, and wrong. We cannot control what the Russians do, not completely, but we can decide what we do and that this centuries-old experiment we call American democracy is worth cherishing.

Director Mueller, thank you again for being here today. And before I adjourn, I would like to excuse you and Mr. Zebley.

Everyone else, please remain seated.

This hearing is adjourned.

[Whereupon, at 3:30 p.m., the committee was adjourned.]



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit F**

## JUSTICE NEWS

### Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Thursday, June 8, 2017

## Department of Justice Issues Statement on Testimony of Former FBI Director James Comey

In response to testimony given today by former FBI Director James Comey, Department of Justice Spokesman Ian Prior issued the following statement:

- Shortly after being sworn in, Attorney General Sessions began consulting with career Department of Justice ethics officials to determine whether he should recuse himself from any existing or future investigations of any matters related in any way to the campaigns for President of the United States.

Those discussions were centered upon 28 CFR 45.2, which provides that a Department of Justice attorney should not participate in investigations that may involve entities or individuals with whom the attorney has a political or personal relationship. That regulation goes on to define "political relationship" as:

"[A] close identification with an elected official, a candidate (whether or not successful) for elective, public office, a political party, or a campaign organization, arising from service as a principal adviser thereto or a principal official thereof \*\*\*"

Given Attorney General Sessions' participation in President Trump's campaign, it was for that reason, and that reason alone, the Attorney General made the decision on March 2, 2017 to recuse himself from any existing or future investigations of any matters related in any way to the campaigns for President of the United States.

- In his testimony, Mr. Comey stated that he was "not \*\*\* aware of" "any kind of memorandum issued from the Attorney General or the Department of Justice to the FBI outlining the parameters of [the Attorney General's] recusal." However, on March 2, 2017, the Attorney General's Chief of Staff sent the attached email specifically informing Mr. Comey and other relevant Department officials of the recusal and its parameters, and advising that each of them instruct their staff "not to brief the Attorney General \*\*\* about, or otherwise involve the Attorney General \*\*\* in, any such matters described."
- During his testimony, Mr. Comey confirmed that he did not inform the Attorney General of his concerns about the substance of any one-on-one conversation he had with the President. Mr. Comey said, following a morning threat briefing, that he wanted to ensure he and his FBI staff were following proper communications protocol with the White House. The Attorney General was not silent; he responded to this comment by saying that the FBI and Department of Justice needed to be careful about following appropriate policies regarding contacts with the White House.
- Despite previous inaccurate media reports, Mr. Comey did not say that he ever asked anyone at the Department of Justice for more resources related to this investigation.

- In conclusion, it is important to note that after his initial meeting with career ethics officials regarding recusal (and including the period prior to his formal recusal on March 2, 2017), the Attorney General has not been briefed on or participated in any investigation within the scope of his recusal.

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**Component(s):**

Office of the Attorney General

**Press Release Number:**

17-631

*Updated June 8, 2017*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
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2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit G**

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515**

February 22, 2019

The Honorable William P. Barr  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Dear Mr. Attorney General:

Recent reports suggest that Special Counsel Robert Mueller may be nearing the end of his investigation into “any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump” and other matters that may have arisen directly from the investigation.<sup>1</sup> As you know, Department of Justice regulations require that, “[a]t the conclusion of the Special Counsel’s work, he or she shall provide the Attorney General with a confidential report explaining the prosecution or declination decisions reached by the Special Counsel.”<sup>2</sup>

After nearly two years of investigation—accompanied by two years of direct attacks on the integrity of the investigation by the President—the public is entitled to know what the Special Counsel has found. We write to you to express, in the strongest possible terms, our expectation that the Department of Justice will release to the public the report Special Counsel Mueller submits to you—without delay and to the maximum extent permitted by law.

There also remains a significant public interest in the full disclosure of information learned by the Special Counsel about the nature and scope of the Russian government’s efforts to undermine our democracy. To the extent that the Department believes that certain aspects of the report are not suitable for immediate public release, we ask that you provide that information to Congress, along with your reasoning for withholding the information from the public, in order for us to judge the appropriateness of any redactions for ourselves.

We also expect that the Department will provide to our Committees, upon request and consistent with applicable law, other information and material obtained or produced by the

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<sup>1</sup> *Appointment of Special Counsel to Investigate Russian interference with the 2016 Presidential Election and Related Matters*, Order No. 3915-2017, Office of the Deputy Attorney General, May 17, 2017.

<sup>2</sup> 26 C.F.R. § 600.8(c).

Special Counsel regarding certain foreign actors and other individuals who may have been the subject of a criminal or counterintelligence investigation. This expectation is well-grounded in the precedent set by the Department in recent years. In other closed and pending high-profile cases alleging wrongdoing by public officials, both the Department and the FBI have produced substantial amounts of investigative material, including classified and law enforcement sensitive information, to the House of Representatives.

Finally, although we recognize the policy of the Department to remain sensitive to the privacy and reputation interests of individuals who will not face criminal charges,<sup>3</sup> we feel that it is necessary to address the particular danger of withholding evidence of misconduct by President Trump from the relevant committees.

If the Special Counsel has reason to believe that the President has engaged in criminal or other serious misconduct, then the President must be subject to accountability either in a court or to the Congress. But because the Department has taken the position that a sitting President is immune from indictment and prosecution,<sup>4</sup> Congress could be the only institution currently situated to act on evidence of the President's misconduct. To maintain that a sitting president cannot be indicted, and then to withhold evidence of wrongdoing from Congress because the President will not be charged, is to convert Department policy into the means for a cover-up. The President is not above the law.

Thank you for your consideration.

Sincerely,



Rep. Jerrold Nadler

Chairman

House Committee on the Judiciary



Rep. Adam Schiff

Chairman

House Permanent Select Committee on  
Intelligence



Rep. Elijah Cummings

Chairman

House Committee on Oversight and Reform



Rep. Eliot Engel

Chairman

House Foreign Affairs Committee

<sup>3</sup> See, e.g., *United States Attorneys' Manual* 9-27.790 and 9-11.130.

<sup>4</sup> See Memorandum from Robert G. Dixon, Jr., Assistant Attorney General, Office of Legal Counsel; *Amenability of the President, Vice President, and Other Civil Officers to Federal Criminal Prosecution while in Office* (Sept. 24, 1973).



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Rep. Maxine Waters  
Chairwoman  
House Committee on Financial Services



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Rep. Richard Neal  
Chair  
House Ways and Means Committee

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit H**



## SUBPOENA

### BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To The Honorable William P. Barr, Attorney General of the United States

You are hereby commanded to be and appear before the  
Committee on the Judiciary

of the House of Representatives of the United States at the place, date, and time specified below.

- ☒ **to produce the things identified on the attached schedule** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: 2138 Rayburn House Office Building, Washington, D.C., 20515

Date: May 1, 2019

Time: 10:00am

- ☐ **to testify at a deposition** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: \_\_\_\_\_

Date: \_\_\_\_\_ (and continuing until completed)

Time: \_\_\_\_\_

- ☐ **to testify at a hearing** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

To any authorized staff member or the U.S. Marshals Service

\_\_\_\_\_ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at  
the city of Washington, D.C. this 18th day of April, 2019.

Attest:

Cheryl L Johnson  
Clerk

James H. Madole  
Chairman or Authorized Member

## PROOF OF SERVICE

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Subpoena for

The Honorable William P. Barr, Attorney General of the United States

Address United States Department of Justice

950 Pennsylvania Ave., NW, Washington DC, 20530

before the Committee on the Judiciary

*U.S. House of Representatives*  
*116th Congress*

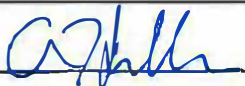
---

Served by (print name) Aaron Hiller

Title Deputy Chief Counsel, House Judiciary Committee

Manner of service Electronic

Date 04/19/2019

Signature of Server 

Address 2138 Rayburn House Office Building

Washington, D.C. 20515

**SCHEDULE**

You are hereby required to produce the following in accordance with the attached Definitions and Instructions:

1. The complete and unredacted version of the report submitted on or about March 22, 2019 by Special Counsel Robert Mueller, pursuant to his authority under 28 C.F.R. § 600.8(c), entitled, "Report on the Investigation into Russian Interference in the 2016 Presidential Election" ("the Report"). This includes, but is not limited to, all summaries, exhibits, indices, tables of contents or other tables or figures, appendices, supplements, addenda or any other attachments whether written or attached in a separate electronic format.
2. All documents referenced in the Report.
3. All documents obtained and investigative materials created by the Special Counsel's Office.

### DEFINITIONS

As used in this subpoena, the following terms shall be interpreted in accordance with these definitions:

1. "And," and "or," shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
2. "Any" includes "all," and "all" includes "any."
3. "Communication(s)" means the transmittal of information by any means, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic message including email, text message, instant message, MMS or SMS message, encrypted message, message application, social media, or otherwise.
4. "Employee" means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
5. "Document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail ("e-mail"), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term "document" includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto.
6. "Documents in your possession, custody or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party. This includes but is not limited to documents that are or were held by your attorneys.
7. "Each" shall be construed to include "every," and "every" shall be construed to include "each."
8. "Including" shall be construed broadly to mean "including, but not limited to."
9. "Investigative materials" means any document created, generated, authored, or obtained by the Special Counsel's Office pursuant to the Special Counsel's Investigation, including but not limited to, prosecution memoranda, FBI 302 interview reports, signals intelligence, witness interviews, written interrogatories and responses, search warrants, subpoenas, Foreign

Intelligence Surveillance Act applications, notes, transcripts, reports, whether classified or unclassified.

10. "Person" or "persons" means natural persons, firms, partnerships, associations, corporations, subsidiaries, division, departments, joint ventures proprietorships, syndicates, or other legal business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units, thereof.
11. "Referenced" means cited, quoted, mentioned, described, alluded to, contained, incorporated, reproduced, or identified in any manner whatsoever.
12. "Relating to" shall mean discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting, evidencing, constituting, comprising, showing, setting forth, considering, recommending, concerning, or pertinent to that subject in any manner whatsoever.
13. "Special Counsel's Office" means the office created pursuant to Department of Justice Order No. 3915-17 issued by the Acting Attorney General on May 17, 2017 appointing Robert S. Mueller III as Special Counsel, and its employees.
14. "Special Counsel's Investigation" means the investigation conducted by the Special Counsel's Office pursuant to Department of Justice Order No. 3915-17 issued by the Acting Attorney General on May 17, 2017.
15. "The Report" means the complete and unredacted version of the report submitted on or about March 22, 2019 by Special Counsel Robert Mueller, pursuant to his authority under 28 C.F.R. § 600.8(c), entitled, "Report on the Investigation into Russian Interference in the 2016 Presidential Election."

### INSTRUCTIONS

1. In complying with this subpoena, you should produce all responsive documents in unredacted form that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you. If a document is referenced in the Report in part, you should produce it in full in a complete and unredacted form.
2. Documents responsive to the subpoena should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that a document is withheld in full or in part on any basis, including a claim of privilege, you should provide a log containing the following information concerning every such document: (i) the reason the document is not being produced; (ii) the type of document; (iii) the general subject matter; (iv) the date, author, addressee, and any other recipient(s); (v) the relationship of the author and addressee to each other; and (vi) any other description necessary to identify the document and to explain the basis for not producing the document. If a claimed privilege applies to only a portion of any document, that portion only should be withheld and the remainder of the document should be produced. As used herein, "claim of privilege" includes, but is not limited to, any claim that a document either may or must be withheld from production pursuant to any law, statute, rule, policy or regulation.
4. Any objections or claims of privilege are waived if you fail to provide an explanation of why full compliance is not possible and a log identifying with specificity the ground(s) for withholding each document prior to the subpoena compliance date.
5. In complying with the subpoena, be apprised that the Committee does not recognize: any purported non-disclosure privileges associated with the common law including, but not limited to the deliberative-process privilege, the attorney-client privilege, and attorney work product protections; or any purported contractual privileges, such as non-disclosure agreements.
6. Any assertion of any such non-constitutional legal bases for withholding documents or other materials, shall be of no legal force and effect and shall not provide a justification for such withholding or refusal, unless and only to the extent that the Committee has consented to recognize the assertion as valid.
7. Pursuant to 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
8. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
9. If any document responsive to this subpoena was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this subpoena, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party, including, but not limited to (a) how the document was disposed of; (b) the name, current address, and telephone number of the person who currently has possession, custody, or

control over the document; (c) the date of disposition; and (d) the name, current address, and telephone number of each person who authorized said disposition or who had or has knowledge of said disposition.

10. If any document responsive to this subpoena cannot be located, describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction or unavailability.
11. In the event that any entity, organization, or individual named in the subpoena has been, or is currently, known by any other name, the subpoena should be read also to include such other names under that alternative identification.
12. All documents should be produced with Bates numbers affixed. The Bates numbers must be unique, sequential, fixed-length numbers and must begin with a prefix referencing the name of the producing party (e.g., ABCD-000001). This format must remain consistent across all productions. The number of digits in the numeric portion of the format should not change in subsequent productions, nor should spaces, hyphens, or other separators be added or deleted. All documents should be Bates-stamped sequentially and produced sequentially.
13. Documents produced pursuant to this subpoena should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this subpoena should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this subpoena was issued. Indicate the office or division and person from whose files each document was produced.
14. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.
15. Produce electronic documents as created or stored electronically in their original electronic format. Documents produced in electronic format should be organized, identified, and indexed electronically, in a manner comparable to the organization structure called for in Instruction 13 above.
16. Data may be produced on CD, DVD, memory stick, USB thumb drive, hard drive, or via secure file transfer, using the media requiring the least number of deliverables. Label all media with the following:
  - a. Production date;
  - b. Bates range;
  - c. Disk number (1 of X), as applicable.
17. If a date or other descriptive detail set forth in this subpoena referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the subpoena, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

18. The subpoena is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.
19. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. Production sets shall be delivered to the Majority Staff in Room 2138 of the Rayburn House Office Building and the Minority Staff in Room 2142 of the Rayburn House Office Building. You should consult with Committee Majority Staff regarding the method of delivery prior to sending any materials.
20. If compliance with the subpoena cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production. In the event that any responsive documents or other materials contain classified information, please immediately contact Committee staff to discuss how to proceed.
21. Upon completion of the document production, please submit a written certification, signed by you or by counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the subpoena have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's subpoena or in anticipation of receiving the Committee's subpoena, and (3) all documents identified during the search that are responsive have been produced to the Committee, identified in a log provided to the Committee, or otherwise identified as provided herein.
22. A cover letter should be included with each production including the following information:
  - a. List of each piece of media (hard drive, thumb drive, DVD or CD) included in the production by the unique number assigned to it, and readily apparent on the physical media;
  - b. List of fields in the order in which they are listed in the metadata load file;
  - c. The paragraph(s) and/or clause(s) in the Committee's subpoena to which each document responds;
  - d. Time zone in which emails were standardized during conversion (email collections only);
  - e. Total page count and bates range for the entire production, including both hard copy and electronic documents.
23. You need not produce documents which are readily publicly available.
24. As to Item 3 in the Schedule, please consult with the Committee to determine a reasonable time period for compliance.



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit I**

**Congress of the United States**  
**Washington, DC 20515**

April 1, 2019

The Honorable William P. Barr  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Dear Attorney General Barr:

On March 25, 2019, we sent you a letter requesting that you produce to Congress the full report of Special Counsel Robert S. Mueller III and its underlying evidence by Tuesday, April 2, 2019. “To the extent you believe the applicable law limits your ability” to produce the entire report, we urged that you “begin the process of consultation with us immediately” to resolve those issues without delay.<sup>1</sup> On Wednesday, April 3, 2019, the House Judiciary Committee plans to begin the process of authorizing subpoenas for the report and underlying evidence and materials. While we hope to avoid resort to compulsory process, if the Department is unwilling to produce the report to Congress in unredacted form, then we will have little choice but to take such action.

As Chairman Nadler explained in his phone conversation with you on March 27, Congress requires a complete and unedited copy of the Special Counsel’s report, as well as access to the evidence and materials underlying that report. During your confirmation hearing in January, you stated that your “goal will be to provide as much transparency as I can consistent with the law.” As such, if the Department believes it is unable to produce any of these materials in full due to rules governing grand jury secrecy, it should seek leave from the district court to produce those materials to Congress—as it has done in analogous situations in the past. To the extent you believe any other types of redactions are necessary, we again urge you to engage in an

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<sup>1</sup> Letter from Chairpersons Jerrold Nadler, H Comm. on the Judiciary, Elijah Cummings H. Comm. on Oversight & Reform, Adam Schiff, H. Perm. Select. Comm. on Intelligence, Maxine Waters, H. Comm. on Fin. Servs., Richard Neal, House Comm. on Ways & Means, and Eliot Engel, H. Comm. on Foreign Affairs, to Att’y Gen. William P. Barr (Mar. 25, 2019). *See also* Letter from Chairpersons Jerrold Nadler, H Comm. on the Judiciary, Elijah Cummings H. Comm. on Oversight & Reform, Adam Schiff, H. Perm. Select. Comm. on Intelligence, Maxine Waters, H. Comm. on Fin. Servs., Richard Neal, House Comm. on Ways & Means, and Eliot Engel, H. Comm. on Foreign Affairs, to Att’y Gen. William P. Barr, informing him of their expectation that he will make Special Counsel Robert Mueller’s report public “without delay and to the maximum extent permitted by law” (Feb. 22, 2019).

immediate consultation to address and alleviate any concerns you have about providing that information to Congress.<sup>2</sup>

We also reiterate our request that you appear before the Judiciary Committee as soon as possible—not in a month, as you have offered, but now, so that you can explain your decisions to first provide Congress with your characterization of the Mueller report as opposed to the report itself; to initiate a redaction process that withholds critical information from Congress; and to assume for yourself final authority over matters within Congress’s constitutional purview. In addition, as Chairman Nadler also requested on his call with you, we ask for your commitment to refrain from interfering with Special Counsel Mueller testifying before the Judiciary Committee—and before any other relevant committees—after the report has been released regarding his investigation and findings.

Congress is, as a matter of law, entitled to each of the categories of information you proposed to redact from the Special Counsel’s report in your March 29 letter.<sup>3</sup> In the attached appendix we provide a more complete legal analysis of each of the potential redaction categories your letter identified. We expect the Department will take all necessary steps without further delay—including seeking leave from the court to disclose the limited portions of the report that may involve grand jury materials—in order to satisfy your promise of transparency and to allow Congress to fulfill its own constitutional responsibilities.<sup>4</sup>

Full release of the report to Congress is consistent with both congressional intent and the interests of the American public. On March 14, 2019, by a vote of 420-0, the House unanimously passed H. Con. Res. 24, a resolution calling for “the full release” of the Special Counsel’s report to Congress, as well as the public release of the Special Counsel’s report except to the extent the disclosure of “any portion thereof is expressly prohibited by law.” The American people have also consistently and overwhelmingly supported release of the full report. The President himself has likewise called for its release in full.

The allegations at the center of Special Counsel Mueller’s investigation strike at the core of our democracy. Congress urgently needs his full, unredacted report and its underlying evidence in order to fulfill its constitutional role, including its legislative, appropriations, and

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<sup>2</sup> Congress is authorized by law and equipped to receive and examine the U.S. government’s most sensitive materials and information. The Department of Justice and the Federal Bureau of Investigation have long provided to relevant congressional committees sensitive law enforcement and investigatory information and records in complete and unredacted form, including those involving classified information, that are not provided to the general public.

<sup>3</sup> Letter from Att’y Gen. William P. Barr to Chairman Lindsey Graham, S. Comm. on the Judiciary, and Chairman Jerrold Nadler, H. Comm. on the Judiciary (Mar. 29, 2019).

<sup>4</sup> At a minimum, the Department should produce a detailed log of each redaction and the reasons supporting it in order to facilitate the accommodation process and to provide sufficient clarity for Congress to evaluate the Department’s claims.

oversight responsibilities. Congress can and has historically been provided with sensitive, unredacted, and classified material that cannot be provided to the general public. In addition, the American people deserve to be fully informed about these issues of extraordinary public interest, and therefore need to see the report and findings in Special Counsel Mueller's own words to the fullest extent possible.

For all these reasons, we hope you will produce to Congress an unredacted report and underlying materials to avoid the need for compulsory process.

Sincerely,



Jerrold Nadler

Chairman

House Committee on the Judiciary



Maxine Waters

Chairwoman

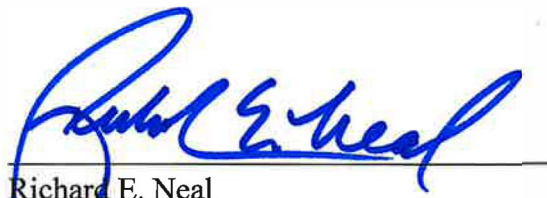
House Committee on Financial Services



Elijah E. Cummings

Chairman

House Committee on Oversight and Reform



Richard E. Neal

Chairman

House Committee on Ways and Means



Adam Schiff

Chairman

House Permanent Select Committee on Intelligence



Eliot L. Engel

Chairman

House Committee on Foreign Affairs

**Appendix:**  
**The Department of Justice Must Produce the Full Mueller Report**

Congress urgently needs the full Special Counsel's report and the underlying evidence in order to fulfill its Article I constitutional functions, including its legislative, appropriations, and oversight responsibilities. Moreover, there is no basis for withholding from Congress the four categories of information described by the Attorney General in his March 29 letter to the House and Senate Judiciary Committees.<sup>1</sup>

1. Congress Urgently Requires the Full Report and the Evidence

The Attorney General's March 24 letter indicates that the Special Counsel found that President Trump may have criminally obstructed the Department's investigation of Russia's interference in the 2016 election and related matters.<sup>2</sup> The Special Counsel pointedly stated that the evidence the investigation uncovered "does not exonerate" the President of obstruction, and includes potentially criminal acts not yet known to the public.<sup>3</sup> It is difficult to overstate the seriousness of those actions if, in the wake of an attack by a hostile nation against our democracy, President Trump's response was to seek to undermine the investigation rather than take action against the perpetrators.

The longer the delay in obtaining this information, the more harm will accrue to Congress's independent duty to investigate misconduct by the President and to assure public confidence in the integrity and independence of federal law enforcement operations. These are not only matters of addressing the harm that has occurred; they are urgent ongoing concerns. As has been publicly reported and referenced in the March 24 letter, multiple open investigations referred by the Special Counsel to other U.S. Attorneys' offices may implicate the President or his campaign, transition, inauguration, or businesses. These critically important inquiries could be compromised if the President is seeking to interfere with them. Among other things, Congress has considered and continues to consider legislation to protect the integrity of these type of investigations against precisely the sorts of interference in which the President appears to have engaged.<sup>4</sup>

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<sup>1</sup> Letter from Att'y Gen. William P. Barr to Chairman Lindsey Graham, S. Comm. on the Judiciary, and Chairman Jerrold Nadler, H. Comm. on the Judiciary (Mar. 29, 2019).

<sup>2</sup> Letter from Att'y Gen. William P. Barr to Chairman Lindsey Graham and Ranking Member Dianne Feinstein, S. Comm. on the Judiciary, and Chairman Jerrold Nadler and Ranking Member Doug Collins, H. Comm. on the Judiciary (Mar. 24, 2019) (hereinafter "March 24 Letter").

<sup>3</sup> March 24 Letter at 3 (the report "addresses a number of actions by the President—*most of which* have been the subject of public reporting") (emphasis added).

<sup>4</sup> See H.R. 197 and S. 71, Special Counsel Independence and Integrity Act, 116th Cong (2019); see also H.R. 1357, Special Counsel Reporting Act, 116th Cong. (2019); H.R. 1627, Abuse of Pardon Prevention Act, 116th Cong. (2019); H.R. 1348, Presidential Pardon Transparency Act, 116th Cong. (2019).

Moreover, the Judiciary Committee is engaged in an ongoing investigation of whether the President has undermined the rule of law, including by compromising the integrity of the Justice Department. Other committees are engaged in investigations related to whether the President, his associates, or members of his administration have engaged in other corrupt or unethical activities or are subject to foreign influence or compromise by actors abroad. Congress's authority "to inquire into and publicize corruption, maladministration or inefficiency in agencies of the Government" has been unquestioned since "the earliest times in its history."<sup>5</sup> That interest is at its height when Congress's oversight activities pertain to potentially illegal acts by the President. As a court determined in another context involving the release of a report about potential obstruction of justice by a President, "[i]t would be difficult to conceive of a more compelling need than that of this country for an unswervingly fair inquiry based on all the pertinent information."<sup>6</sup>

The March 24 letter also claims that the Special Counsel's decision not to reach a definitive legal conclusion about obstruction "leaves it to the Attorney General to determine whether the conduct described in the report constitutes a crime."<sup>7</sup> That view is fundamentally flawed. As a coequal branch of government—indeed, as the only branch of government that is expressly empowered by the Constitution to hold the President accountable—Congress must be permitted to assess the President's conduct for itself. The Attorney General cannot unilaterally make himself judge and jury. That is particularly so where the Attorney General has already expressed the view—in arguing against a theory of obstruction in this very investigation—that "there is no legal prohibition . . . against the President's acting on a matter in which he has a personal stake."<sup>8</sup>

The Attorney General's pre-confirmation memorandum on this topic also stated that "the determination of whether the President is making decisions based on 'improper' motives or whether he is 'faithfully' discharging his responsibilities is left to the people, through the election process, and the Congress."<sup>9</sup> Neither the American people nor Congress, however, can make any such a determination without all of Special Counsel Mueller's evidence, analysis, and findings—unfiltered and in his own words.

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<sup>5</sup> *Watkins v. United States*, 354 U.S. 178, 200 n.33 (1957) (internal quotations omitted)

<sup>6</sup> *In re Report & Rec. of June 5, 1972 Grand Jury Concerning Transmission of Evidence to House of Representatives*, 370 F. Supp. 1219, 1230 (D.D.C. 1974).

<sup>7</sup> March 24 Letter at 3.

<sup>8</sup> William P. Barr, *Memorandum Re: Mueller's "Obstruction" Theory* at 10, June 8, 2018 (emphasis omitted). Additionally, although the Attorney General's March 24 letter states that the absence of an underlying crime bears upon the President's intent, it is black-letter law that there need not be an underlying crime for obstruction of justice to occur. See, e.g., *United States v. Hopper*, 177 F.3d 828, 831 (9th Cir. 1999).

<sup>9</sup> *Id.* at 11.

The Special Counsel's investigation also confirmed that Russia engaged in extensive efforts to interfere in the 2016 presidential election, and Congress's need for that information is no less urgent. The Special Counsel's report, according to the Attorney General, describes "crimes committed by persons associated with the Russian government in connection with these efforts," including "efforts to conduct computer hacking operations designed to gather and disseminate information to influence the election."<sup>10</sup>

These hostile acts are ongoing: The Department has indicated in at least one other case that Russian influence efforts continued into the 2018 midterm elections.<sup>11</sup> The Director of National Intelligence likewise testified last year in regard to the 2018 midterm elections that Russia would continue to use "persistent and disruptive cyber operations" and would target "elections as opportunities to undermine democracy" both here and against our allies in Europe.<sup>12</sup> More recently, Director Coats warned that Russia and other adversaries "probably are already looking to the 2020 U.S. election" to conduct malign influence operations and that "Moscow may employ additional influence toolkits—such as spreading disinformation, conducting hack-and-leak operations, or manipulating data—in a more targeted fashion to influence U.S. policy, actions, and elections."<sup>13</sup> It is imperative that Congress have access to the Special Counsel's full descriptions and evidence of these crimes and malign influence operations that the Russian government or associated actors perpetrated against our democracy.

Moreover, the Attorney General's March 24 letter acknowledges "multiple offers from Russian-affiliated individuals to assist the Trump campaign."<sup>14</sup> The facts and circumstances uncovered by the Special Counsel's Office surrounding these and any other overtures by foreign actors, as well as the individuals associated with them and how they responded to such offers, are of vital importance to Congress. The Foreign Affairs Committee, for example, requires access to these facts as it investigates whether the foreign and financial entanglements of the President and his associates may be improperly influencing foreign policy in ways that serve their private interests rather than the national security of the United States. Moreover, the House Permanent Select Committee on Intelligence must have access to the full facts as it evaluates counterintelligence threats and risks during and since the 2016 U.S. election, and as it considers

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<sup>10</sup> March 24 Letter at 2.

<sup>11</sup> See Criminal Complaint ¶ 14, *United States v. Khusyaynova*, No. 1:18-mj-464 (E.D. Va. Sept. 28, 2018) (alleging Russian national participated in a conspiracy "to interfere with U.S. political and electoral processes, including the 2018 U.S. elections").

<sup>12</sup> Patricia Zengerle and Diona Chaicu, *U.S. 2018 Elections 'Under Attack' by Russia: U.S. Intelligence Chief*, Reuters, Feb. 13, 2018.

<sup>13</sup> Worldwide Threats: Hearing before the S. Select Comm. on Intelligence, 116th Cong. (Jan. 29, 2019) (Statement of Daniel R. Coats, Director of National Intelligence).

<sup>14</sup> March 24 Letter at 2.

remedies necessary to prevent, or mitigate to the greatest extent possible, the vulnerability of campaigns, or persons associated with them, to foreign influence or compromise operations.

Congressional committees have conducted multiple hearings regarding foreign influence operations and the security of our election systems and have proposed numerous legislative reforms to address vulnerabilities.<sup>15</sup> In an appropriations bill enacted into law last year, Congress allocated much-needed funding to support election security initiatives.<sup>16</sup> It is critical to legislation that has or will be introduced this year to understand foreign intelligence disinformation campaigns, risks to our election infrastructure security, evolving methods of voter targeting and suppression, and the manner in which foreign adversaries seek to exploit campaign vulnerabilities as well as the technology industry in our elections moving forward.

In addition, the House of Representatives' appropriations process for the next fiscal year is already underway—including for funding any election security, cybersecurity, and offensive or defensive counterintelligence operations needed to combat attacks during the 2020 election—with submission deadlines scheduled for April and appropriations packages expected to reach the House floor in June.<sup>17</sup> However, Congress cannot fully address the scope of these threats (whether through appropriations or other legislation) without a thorough accounting by the Special Counsel's Office of the attack that occurred in 2016. Indeed, it is difficult to envision any function of Congress more important than ensuring the integrity of our democratic elections, authorizing and appropriating funding for the relevant federal authorities, and authorizing critical national security programs.

## 2. The Application of Rule 6(e) is Limited and Does Not Bar Disclosures to Congress

The Attorney General has indicated that the Department is reviewing the Special Counsel's report to identify material whose disclosure may be limited by Federal Rule of Criminal Procedure 6(e), which prohibits certain disclosures of "matter[s] occurring before the grand jury." In a call with Chairman Nadler, the Attorney General suggested that redactions made in accordance with Rule 6(e) will be substantial. But even assuming Rule 6(e) applies with respect to disclosures to Congress,<sup>18</sup> the law clearly forbids the Department from making

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<sup>15</sup> See, e.g., Secure America from Russian Interference Act, H.R. 6437, 115th Cong. (2018); Defending Elections from Threats by Establishing Redlines Act, H.R. 4884, 115th Cong. (2018); Bot Disclosure Accountability Act, S. 3127, 115th Cong. (2018); H.R. 5011, Election Security Act, 115th Cong. (2018); For the People Act, H.R. 1, 116th Cong (2019).

<sup>16</sup> Pub. L. No. 115-141, Div. E, tit. V (2018).

<sup>17</sup> See Hearings, H. Comm. on Appropriations, 116th Cong. (2019); Paul M. Krawzak, *House appropriations may start markup in April*, RollCall, Mar. 19, 2019.

<sup>18</sup> See, e.g., *In re Grand Jury Inv. of Ven-Fuel*, 441 F. Supp. 1299, 1302, 1304-08 (M.D. Fla. 1977) (holding that Congress has "an independent right" under the Constitution to obtain requested documents regardless of whether they are subject to Rule 6(e)); *In re Proceedings of Grand Jury No. 81-1 (Miami)*, 669 F. Supp. 1072, 1075 (S.D.



sweeping designations as to any evidence that happens to have been presented to a grand jury or was obtained through a grand jury subpoena.

Rule 6(e) “does not ‘draw a veil of secrecy . . . over all matters occurring in the world that happen to be investigated by a grand jury.’”<sup>19</sup> “The mere fact that information has been presented to the grand jury does not” mean that the information is prohibited from disclosure.<sup>20</sup> Further, as the D.C. Circuit has made clear, the fact that evidence was obtained through a grand jury subpoena does not necessarily mean that it is barred from disclosure by Rule 6(e).<sup>21</sup> As a result, the Department cannot withhold documents or information simply because they were produced in response to a grand jury subpoena. Because a person receiving the documents would not know whether they were obtained through a grand jury subpoena or other means, “subpoenaed documents would not necessarily reveal a connection to a grand jury.”<sup>22</sup> Just last year, the D.C. Circuit reaffirmed this principal in *Bartko v. Dep’t of Justice*, where it made clear that “copies of specific records provided to a federal grand jury” were not covered by Rule 6(e) because “‘the mere fact the documents were subpoenaed fails to justify withholding under Rule 6(e).’”<sup>23</sup>

For this reason, it is clear the Department cannot withhold portions of the Special Counsel’s report merely because they discuss information that was presented to the grand jury or documents that were obtained through a grand jury subpoena. Likewise, the Department cannot withhold underlying evidence simply because it was presented to the grand jury or obtained through a grand jury subpoena. That is particularly so because the Special Counsel’s Office obtained a great deal of evidence by other means. The Special Counsel’s team interviewed numerous witnesses on a voluntary basis and acquired voluminous records without resorting to grand jury subpoenas.<sup>24</sup> Other evidence was obtained through different types of mandatory legal process, such as through the issuance of nearly 500 search warrants.<sup>25</sup> That evidence can of course be disclosed without implicating Rule 6(e). And because so much evidence was obtained

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Fla. 1987) (similar). *But see In re Grand Jury Investigation of Uranium Indus.*, Misc. 78-173, 1979 WL 1661, at \*4 (D.D.C. Aug. 16, 1979). No circuit court has squarely addressed this issue.

<sup>19</sup> *Labow v. Dep’t of Justice*, 831 F.3d 523, 529 (D.C. Cir. 2016) (quoting *Senate of the Com. of Puerto Rico v. Dep’t of Justice*, 823 F.2d 574, 582 (D.C. Cir. 1987) (R.B. Ginsburg, J.)).

<sup>20</sup> *Id.* at 529.

<sup>21</sup> *Id.* at 529-30.

<sup>22</sup> *Id.* at 529.

<sup>23</sup> 898 F.3d 51, 73 (D.C. Cir. 2018) (quoting *Labow*, 831 F.3d at 530).

<sup>24</sup> See, e.g., Philip Rucker et al., *A Mueller Mystery: How Trump Dodged a Special Counsel Interview—and a Subpoena Fight*, WASH. POST, Mar. 28, 2019 (quoting the President’s attorney, Rudolph Giuliani, who stated, “We allowed [the Special Counsel’s office] to investigate everybody, and [the White House] turned over every document they were asked for: 1.4 million documents.”).

<sup>25</sup> March 24 Letter at 1.

through these other means, the Department would have no basis to withhold materials or descriptions of materials that it happens to have gathered by issuing grand jury subpoenas. So long as those materials do not on their face “‘reveal a connection to a grand jury,’” Rule 6(e) does not bar their disclosure.<sup>26</sup>

As to testimony or other grand jury materials that are genuinely subject to Rule 6(e), the Department can and should work with the House Judiciary Committee to obtain the permission of the district court overseeing the grand jury to make disclosures to Congress on a confidential basis, as it has done in the past in analogous circumstances. The Department took that precise path after the grand jury considering evidence in the Watergate affair issued a report describing potentially criminal acts by President Nixon. The Justice Department filed briefs fully supporting disclosure of the report to the House Judiciary Committee, and made the obvious point that “[t]he need for the House to be able to make its profoundly important judgment on the basis of all available information is as compelling as any that could be conceived.”<sup>27</sup> Independent Counsel Kenneth Starr likewise sought the court’s authorization to disclose grand jury material regarding President Clinton to the House of Representatives.<sup>28</sup>

The district court would have ample authority to permit disclosure of relevant materials to Congress. As Chief Judge Howell, the judge overseeing this grand jury, explained in a recent opinion, “numerous courts have recognized [that] a district court retains an inherent authority to unseal and disclose grand jury material not otherwise falling within the enumerated exceptions to Rule 6(e).”<sup>29</sup> Indeed, every federal court of appeals to have considered this question has reached that conclusion.<sup>30</sup> Congress’s need for these materials is beyond compelling, and the public interest in Congress receiving these materials is at its height. President Trump, moreover, has

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<sup>26</sup> *Barko*, 898 F.3d at 73 (quoting *Labow*, 831 F.3d at 529).

<sup>27</sup> Mem. for the United States on Behalf of the Grand Jury at 16, *In re Report & Rec. of June 5, 1972 Grand Jury*, Misc. No. 74-21 (D.D.C. Mar. 5, 1974).

<sup>28</sup> See Order, *In re Madison Guaranty Savings & Loan Assoc.*, Div. No. 94-1 (D.C. Cir. Special Div. July 7, 1998).

<sup>29</sup> *In re App. to Unseal Dockets Related to the Independent Counsel’s 1998 Investigation of President Clinton*, 308 F. Supp. 3d 314, 323 (D.D.C. 2018).

<sup>30</sup> *Id.* at 323-24. See *Carlson v. United States*, 837 F.3d 753, 763 (7th Cir. 2016); *In re Craig*, 131 F.3d 99, 103 (2d Cir. 1997); *In re Pet. to Inspect & Copy Grand Jury Materials*, 735 F.2d 1261, 1268 (11th Cir. 1984); see also *Pitch v. United States*, 915 F.3d 704, 708-09 (11th Cir. 2019); *Haldeman v. Sirica*, 501 F.2d 714, 715 (D.C. Cir. 1974) (court was “in general agreement with” the district court’s decision to release the Watergate grand jury’s report to Congress). The D.C. Circuit heard argument last fall in a case involving a historian who seeks the release of grand jury material involving an incident that occurred in the 1950s pursuant to the court’s inherent authority to release materials otherwise covered by Rule 6(e). *McKeever v. Barr*, No. 17-5149. The facts of that case are obviously distinct from those presented here. As the Department explained in its brief in *McKeever*, “[t]he question in this appeal is whether . . . a district court may order the disclosure of secret grand jury records solely for reasons of historical or academic interest.”

expressed public support for the report's release.<sup>31</sup> As such, the Department should immediately request that these materials be released to Congress.

The Attorney General has refused thus far to work with Congress in that regard. At his confirmation hearing, however, the Attorney General stated: "I . . . believe it is very important that the public and Congress be informed of the results of the special counsel's work. My goal will be to provide as much transparency as I can consistent with the law."<sup>32</sup> The most efficacious way to honor that commitment would be to join with the House Judiciary Committee in seeking expedited disclosure of any Rule 6(e) material to Congress, and to refer any questions about the scope of Rule 6(e)'s application to independent court review.

### 3. Any Potential Claim of Executive Privilege Has Been Waived

Although the Attorney General's March 24 letter made no mention of executive privilege, his March 29 letter states that "there are no plans to submit the report to the White House for a privilege review," because the President "intends to defer" to the Attorney General on those issues. Whatever that may mean, it would be highly improper for the Department to conceal portions of the report based on claims of executive privilege on behalf of the President. As an initial matter, the Department's own long-standing policy is that executive privilege "should not be invoked to conceal evidence of wrongdoing or criminality on the part of executive officers."<sup>33</sup>

In any event, the President and the White House have waived any claims of executive privilege. The White House voluntarily disclosed millions of documents to the Special Counsel's office and permitted multiple senior officials to be interviewed by the Special Counsel's team, without asserting any type of privilege.<sup>34</sup> Having voluntarily disclosed this evidence, the President cannot now seek to invoke executive privilege to block its release. As the D.C. Circuit has held in an analogous context, regarding waiver of attorney-client privilege, "[t]he client cannot be permitted to pick and choose among his opponents, waiving the privilege for some and resurrecting the claim of confidentiality to obstruct others."<sup>35</sup> Moreover, the White House has similarly shared information and documents with numerous former White House

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<sup>31</sup> Liam Stack, *Trump Says Mueller Report Should Be Made Public: 'Let People See It,'* N.Y. TIMES, Mar. 20, 2019.

<sup>32</sup> *The Nomination of the Honorable William Pelham Barr to be Attorney General of the United States*, hearing before the S. Comm. on the Judiciary, Jan. 15, 2019 (statement of the Hon. William Barr).

<sup>33</sup> Robert B. Shanks, Office of Legal Counsel, *Congressional Subpoenas of Department of Justice Investigative Files*, 8 Op. O.L.C. 252, 267 (1984).

<sup>34</sup> See Rucker et al., *supra* note 24; Michael Schmidt and Maggie Haberman, *White House Counsel, Don McGahn, Has Cooperated Extensively in Mueller Inquiry*, N.Y. TIMES, Aug. 18, 2018 (noting that no privilege was asserted).

<sup>35</sup> *Permian Corp. v. United States*, 665 F.2d 1214, 1221 (D.C. Cir. 1981).

officials and their private counsel.<sup>36</sup> The D.C. Circuit has expressly held that the White House “waive[s] its claims of privilege in regard to [] specific documents that it voluntarily reveal[s] to third parties outside the White House.”<sup>37</sup>

Lastly, in the unlikely event that the White House has preserved privilege as to any of the evidence underlying the Mueller report, the public interest in disclosure would still overwhelmingly outweigh the President’s interest in secrecy. The privilege pertaining to presidential communications is not absolute. Just as the Supreme Court determined in *United States v. Nixon*, the public interest here in the “fair administration of justice” outweighs the President’s “generalized interest in confidentiality.”<sup>38</sup>

4. Ongoing Investigations, Classified Information, and Privacy and Reputational Interests of Third Parties Should Not Prevent Release to Congress

The fact that certain investigations remain ongoing cannot justify the Department withholding critical evidence from Congress that pertains to Russia’s interference in our federal elections or obstruction of justice by the President. Indeed, during the previous Congress, the Department produced to congressional committees thousands of pages of highly sensitive law enforcement and classified investigatory and deliberative records.<sup>39</sup> Many of these were related to *this very same investigation*—which of course was open and ongoing at the time.

Similarly, the mere presence of classified information in the Mueller report or in underlying evidence cannot justify withholding evidence from Congress, which is well equipped to handle classified information and does so on a daily basis. The Department can provide any classified materials to the appropriate committees for handling in secure facilities. It can also permit the Intelligence Community to review the report on an expedited basis in order to share with Congress whatever equities the Intelligence Community feels may be implicated by the release of specific information contained in the report or any underlying materials. Additionally, to the extent the Special Counsel’s Office is in possession of underlying evidence that is particularly sensitive, the relevant committees are in a position to work with the Department to reach an accommodation to ensure appropriate handling as Congress has in the past on numerous occasions. However, the Department should not be able to simply invoke the same reasons for redacting the report from public view as a shield against disclosure to a coequal branch of government.

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<sup>36</sup> See, e.g., Schmidt and Haberman, *supra* note 34.

<sup>37</sup> *In re Sealed Case*, 121 F.3d 729, 741-42 (D.C. Cir. 1997).

<sup>38</sup> 418 U.S. 683, 713 (1974).

<sup>39</sup> See, e.g., *DOJ hands over new classified documents on Russia probe to Congress*, Associated Press, June 23, 2018; Charlie Savage, *Carter Page FISA Released by Justice Department*, N.Y. TIMES, July 21, 2018.

Finally, the Department also should not be able to keep from Congress information related to the “reputational interests of peripheral third parties” as referenced in the Attorney General’s March 29 letter. To the extent the Special Counsel has developed information relative to President Trump’s family members (including those employed by the White House) or his associates, campaign employees, consultants, advisers, and others within the scope of the investigation, that should not be withheld from Congress. It is precisely the type of information that the relevant committees need to perform their oversight, legislative, and other responsibilities. There is no constitutionally recognized privilege that would apply in such instances, and there is ample precedent for provision of such information, as recently as the last Congress.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit J**

**Congress of the United States**  
**Washington, DC 20515**

March 22, 2019

The Honorable William P. Barr  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

Dear Attorney General Barr:

We understand that Special Counsel Robert S. Mueller III has now concluded his investigation of the Russian government's efforts to interfere in the 2016 election and of "any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump."<sup>1</sup> We also understand that Special Counsel Mueller has issued a report to you pursuant to 28 C.F.R. § 600.8(c).

We ask that you immediately take steps to preserve (1) Special Counsel Mueller's report; (2) all evidence underlying the report; and (3) all related work product and investigatory materials compiled by the Special Counsel's Office. This request applies to all documents, records, memoranda, correspondence, or other communications, or any portion thereof relevant to the work of the Special Counsel's Office. We remind you that concealing, removing, or destroying such records may constitute a crime.<sup>2</sup>

Committees of the United States Congress are conducting investigations parallel to those of the Special Counsel's Office, and preservation of these records is critical to ensure that we are able to do our work without interference or delay. We therefore ask that you immediately confirm that the Department of Justice is preserving these records and that you provide us with all orders, notices, and guidance regarding preservation of information related to these matters and investigations.

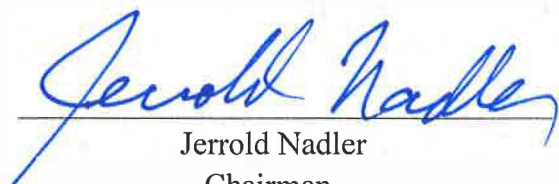
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<sup>1</sup> *Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election and Related Matters*, Order No. 3915-2017, Office of the Deputy Attorney General, May 17, 2017.

<sup>2</sup> 18 U.S.C. § 2071.

We look forward to your prompt attention and response to our request.

Sincerely,



Jerrold Nadler  
Chairman  
House Committee on the Judiciary



Dianne Feinstein  
Ranking Member  
Senate Committee on the Judiciary



Adam Schiff  
Chairman  
House Permanent Select Committee on Intelligence



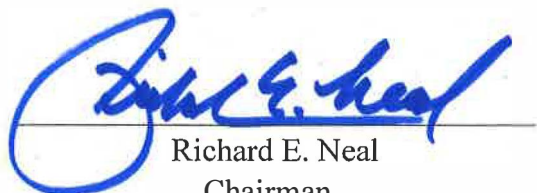
Mark Warner  
Ranking Member  
Senate Select Committee on Intelligence



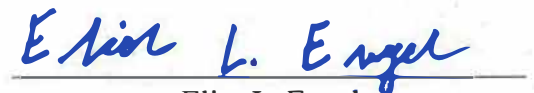
Elijah E. Cummings  
Chairman  
House Committee on Oversight and Reform



Maxine Waters  
Chairwoman  
House Committee on Financial Services



Richard E. Neal  
Chairman  
House Committee on Ways and Means



Eliot L. Engel  
Chairman  
House Committee on Foreign Affairs



Robert Menendez  
Ranking Member  
Senate Committee on Foreign Relations



Ron Wyden  
Ranking Member  
Senate Committee on Finance





Sherrod Brown

Ranking Member

Senate Committee on Banking, Housing, and Urban Affairs

cc:

Rod Rosenstein  
Deputy Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

John Demers  
Assistant Attorney General for National Security  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit K**

**Congress of the United States**  
**Washington, DC 20515**

March 22, 2019

Mr. Pat A. Cipollone  
Counsel to the President  
The White House  
Washington, D.C. 20006

Dear Mr. Cipollone:

We understand that Special Counsel Robert S. Mueller III has now concluded his investigation of the Russian government's efforts to interfere in the 2016 election and of "any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump."<sup>1</sup> We also understand that Special Counsel Mueller has issued a report to Attorney General Barr pursuant to 28 C.F.R. § 600.8(c).

We ask that you immediately take steps to preserve any of the following materials in the White House's possession: (1) all copies of Special Counsel Mueller's report; (2) all evidence or other investigatory materials supplied to the Special Counsel's Office, or any copies thereof; and (3) all related work product or other materials generated by the White House to assist the Special Counsel's Office in its investigation. This request applies to all documents, records, memoranda, correspondence, or other communications, or any portion thereof relevant to the work of the Special Counsel's Office. We remind you that concealing, removing, or destroying such records may constitute a crime.<sup>2</sup>

Committees of the United States Congress are conducting investigations parallel to those of the Special Counsel's Office, and preservation of these records is critical to ensure that we are able to do our work without interference or delay. We therefore ask that you immediately confirm that the White House is preserving these records and that you provide us with all orders, notices, and guidance regarding preservation of information related to these matters and investigations.

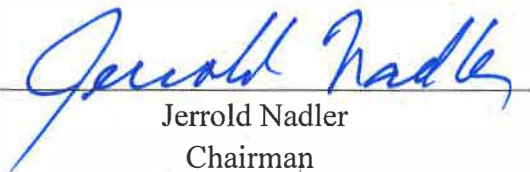
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<sup>1</sup> *Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election and Related Matters*, Order No. 3915-2017, Office of the Deputy Attorney General, May 17, 2017.

<sup>2</sup> 18 U.S.C. § 2071.

We look forward to your prompt attention and response to our request.

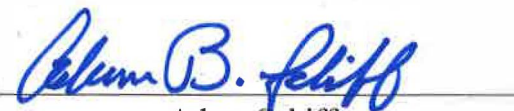
Sincerely,



Jerrold Nadler  
Chairman  
House Committee on the Judiciary



Dianne Feinstein  
Ranking Member  
Senate Committee on the Judiciary



Adam Schiff  
Chairman  
House Permanent Select Committee on Intelligence



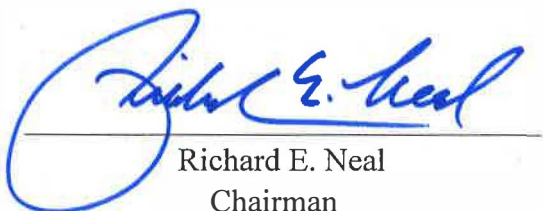
Mark Warner  
Ranking Member  
Senate Select Committee on Intelligence



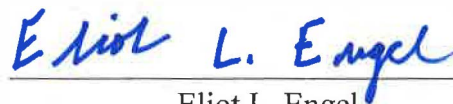
Elijah E. Cummings  
Chairman  
House Committee on Oversight and Reform



Maxine Waters  
Chairwoman  
House Committee on Financial Services



Richard E. Neal  
Chairman  
House Committee on Ways and Means



Eliot L. Engel  
Chairman  
House Committee on Foreign Affairs



Robert Menendez  
Ranking Member  
Senate Committee on Foreign Relations



Ron Wyden  
Ranking Member  
Senate Committee on Finance



Sherrod Brown

Ranking Member

Senate Committee on Banking, Housing, and Urban Affairs

cc:

The Honorable William P. Barr  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC, 20530

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit L**

**Congress of the United States**  
**Washington, DC 20515**

March 25, 2019

The Honorable William P. Barr  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Dear Attorney General Barr:

Your March 24 letter concerning Special Counsel Mueller's report leaves open many questions concerning the conduct of the President and his closest advisors, as well as that of the Russian government during the 2016 presidential election. Accordingly, we formally request that you release the Special Counsel's full report to Congress no later than Tuesday, April 2. We also ask that you begin transmitting the underlying evidence and materials to the relevant committees at that time.

As you know, on March 14, the full House of Representatives approved H. Con. Res. 24, calling for the release of the Special Counsel's report by a vote of 420-0.<sup>1</sup> Each of our committees is currently engaged in oversight activities that go directly to the President's conduct, his attempts to interfere with federal and congressional investigations, his relationships and communications with the Russian government and other foreign powers, and/or other alleged instances of misconduct.

Your four-page summary of the Special Counsel's review is not sufficient for Congress, as a coequal branch of government, to perform this critical work. The release of the full report and the underlying evidence and documents is urgently needed by our committees to perform their duties under the Constitution. Those duties include evaluating the underlying facts and determining whether legislative or other reforms are required—both to ensure that the Justice

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<sup>1</sup> Roll Call Vote No. 125, 116th Cong., Mar. 14, 2019.

Department is able to carry out investigations without interference or obstruction by the President and to protect our future elections from foreign interference.

First, Congress must be permitted to make an independent assessment of the evidence regarding obstruction of justice. The determinations you have reached regarding obstruction and the manner in which you chose to characterize the Special Counsel's investigation only raise further questions, particularly in light of the Special Counsel's decision to refrain from making "a traditional prosecutorial judgment."<sup>2</sup> We also cannot evaluate your determination that "the report identifies no actions" that meet the elements of obstruction in the absence of the report, evidence and other materials.<sup>3</sup>

Second, we have no reason to question that Special Counsel Mueller made a well-considered prosecutorial judgment in two specific and narrow areas—whether the Trump campaign conspired to join Russia's election-related online disinformation and hacking and dissemination efforts. But it is vital for national security purposes that Congress be able to evaluate the full body of facts and evidence collected and evaluated by the Special Counsel, including all information gathered of a counterintelligence nature.

The provision of the report—in complete and unredacted form—and the underlying evidence and materials would be fully consistent with the Justice Department's practice and precedent with Congress, which the Department reinforced in recent years. With respect to the Hillary Clinton email investigation, the Department and the FBI released more than 880,000 pages of documents, publicly identified career officials involved in the case, and produced volumes of internal deliberative materials, including sensitive investigatory and classified materials.<sup>4</sup> In response to congressional requests and subpoenas regarding allegations of bias in the Russia investigation, the Department produced to congressional committees thousands of pages of highly sensitive law enforcement and classified investigatory and deliberative records related to that investigation—which remained open and ongoing at the time. Moreover, the Department produced to congressional committees in full, and then took the unprecedented step of releasing to the public in redacted form, multiple documents related to the surveillance of a United States person under the Foreign Intelligence Surveillance Act.<sup>5</sup>

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<sup>2</sup> Letter from U.S. Attorney General William Barr to Chairman Jerrold Nadler, H. Comm. on the Judiciary, et al., Mar. 24, 2019.

<sup>3</sup> *Id.*

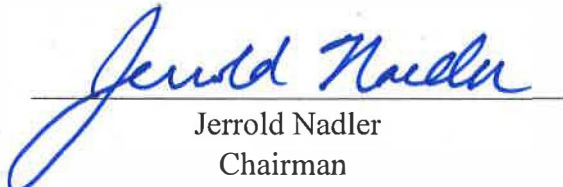
<sup>4</sup> See, e.g., *A Review of Allegations Regarding Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election*, hearing before the H. Comm. on the Judiciary, June 28, 2018 (statement of FBI Director Christopher Wray).

<sup>5</sup> Byron Tau, et al., *Trump Orders Declassification of Intelligence Documents Related to Former Adviser Carter Page*, WALL ST. JOURNAL, Sept. 17, 2018.




We look forward to receiving the report in full no later than April 2, and to begin receiving the underlying evidence and documents that same day.<sup>6</sup> To the extent that you believe applicable law limits your ability to comply, we urge you to begin the process of consultation with us immediately in order to establish shared parameters for resolving those issues without delay.


Sincerely,


  
Jerrold Nadler  
Chairman  
House Committee on the Judiciary

  
Elijah E. Cummings  
Chairman  
House Committee on Oversight and Reform

  
Adam Schiff  
Chairman  
House Permanent Select Committee on Intelligence

  
Maxine Waters  
Chairwoman  
House Committee on Financial Services

  
Richard E. Neal  
Chairman  
House Committee on Ways and Means

  
Eliot L. Engel  
Chairman  
House Committee on Foreign Affairs

<sup>6</sup> As to materials that are subject to Rule 6(e) of the Federal Rules of Criminal Procedure, there is precedent for the release of such materials to Congress under similar circumstances. We look forward to discussing this issue to determine if we can reach a mutually acceptable accommodation.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit M**

**Congress of the United States**  
**Washington, DC 20515**

April 19, 2019

The Honorable William P. Barr  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave. NW  
Washington, D.C. 20530

Dear Attorney General Barr:

We write in response to your proposal regarding restricted access to a less redacted version of Special Counsel Mueller's report. Unfortunately, your proposed accommodation—which among other things would prohibit discussion of the full report, even with other Committee Members—is not acceptable.

In order for Congress to fulfill its functions as intended by the Constitution, it must operate as a coequal and coordinate branch of government. Given the comprehensive factual findings presented by the Special Counsel's Report, some of which will only be fully understood with access to the redacted material, we cannot agree to the conditions you are placing on our access to the full report. Nor can we agree to an arrangement that does not include a mechanism for ensuring access to grand jury material.

As the Special Counsel stated, "The conclusion that Congress may apply the obstruction laws to the President's corrupt exercise of the powers of office accords with our constitutional system of checks and balances and the principle that no person is above the law." The Department now has a duty to submit the full report and underlying evidence to Congress so that it can fulfill its constitutional responsibilities. This includes considering whether legislation is needed in light of the findings contained in Special Counsel Mueller's report and the Attorney General's determination that no prosecution is warranted despite those facts.

While the current proposal is not workable, we are open to discussing a reasonable accommodation with the Department that would protect law enforcement sensitive information while allowing Congress to fulfill its constitutional duties.


Sincerely,



Nancy Pelosi  
Speaker  
U.S. House of Representatives




Chuck Schumer  
Democratic Leader  
U.S. Senate



---

Jerrold Nadler  
Chairman  
House Committee on the Judiciary



---

Dianne Feinstein  
Ranking Member  
Senate Committee on the Judiciary



---

Adam Schiff  
Chairman  
House Permanent Select Committee on  
Intelligence



---

Mark Warner  
Ranking Member  
Senate Select Committee on Intelligence

cc: Honorable Kevin McCarthy, Minority Leader, House of Representatives  
Honorable Mitch McConnell, Majority Leader, Senate  
Honorable Doug Collins, Ranking Member, House Committee on the Judiciary  
Honorable Lindsey Graham, Chairman, Senate Committee on the Judiciary  
Honorable Devin Nunes, Ranking Member, House Permanent Select Committee on  
Intelligence  
Honorable Richard Burr, Chairman, Senate Select Committee on Intelligence

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit N**

JERROLD NADLER, New York  
CHAIRMAN

ZOE LOFGREN, California  
SHEILA JACKSON LEE, Texas  
STEVE COHEN, Tennessee  
HENRY C. "HANK" JOHNSON, JR., Georgia  
TED DEUTCH, Florida  
KAREN BASS, California  
CEDRIC L. RICHMOND, Louisiana  
HAKEEM S. JEFFRIES, New York  
DAVID CICILLINE, Rhode Island  
ERIC SWALWELL, California  
TED LIEU, California  
JAMIE RASKIN, Maryland  
PRAMILA JAYAPAL, Washington  
VAL DEMINGS, Florida  
LOU CORREA, California  
MARY GAY SCANLON, Pennsylvania  
SYLVIA GARCIA, Texas  
JOSEPH NEGUSE, Colorado  
LUCY McBATH, Georgia  
GREG STANTON, Arizona  
MADELEINE DEAN, Pennsylvania  
DEBBIE MUCARSEL-POWELL, Florida  
VERONICA ESCOBAR, Texas

DOUG COLLINS, Georgia  
RANKING MEMBER

F. JAMES SENSENBRENNER, JR., Wisconsin  
STEVE CHABOT, Ohio  
LOUIE GOHMERT, Texas  
JIM JORDAN, Ohio  
KEN BUCK, Colorado  
JOHN RATCLIFFE, Texas  
MARTHA ROBY, Alabama  
MATT GAETZ, Florida  
MIKE JOHNSON, Louisiana  
ANDY BIGGS, Arizona  
TOM McCLINTOCK, California  
DEBBIE LESKO, Arizona  
GUY RESCHENTHALER, Pennsylvania  
BEN CLINE, Virginia  
KELLY ARMSTRONG, Alabama  
GREG STEUBE, Florida

ONE HUNDRED SIXTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951  
<http://www.house.gov/judiciary>

May 3, 2019

The Honorable William P. Barr  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Dear Attorney General Barr:

I write to respond to the Department's letter of May 1, 2019 refusing to comply with the Judiciary Committee's subpoena for the unredacted Mueller report, the documents it cites, and other underlying materials. As you know, the Committee has repeatedly engaged with your staff in writing, by telephone and in person to discuss a way forward on the subpoena.

At the outset, we note that the Department has never explained why it is willing to allow only a small number of Members to view a less-redacted version of the report, subject to the condition that they cannot discuss what they have seen with anyone else. The Department also remains unwilling to work with the Committee to seek a court order permitting disclosure of materials in the report that are subject to Federal Rule of Criminal Procedure 6(e). And the Department has offered no reason whatsoever for failing to produce the evidence underlying the report, except for a complaint that there is too much of it and a vague assertion about the sensitivity of law enforcement files.

Nonetheless, the Committee remains willing to negotiate a reasonable accommodation with the Department. First, the Committee requests that the Department reconsider its refusal to allow all Members of Congress and appropriate staff to view redacted portions of the report that are not subject to Rule 6(e) in a secure location in Congress. As the Committee has already indicated, Congress has ample means of providing for safe storage of these materials; and it is routinely entrusted with the responsibility to protect classified and other sensitive information.

Second, the Committee renews its request that the Department work jointly with Congress to seek a court order permitting disclosure of materials covered by Rule 6(e). The Department has asserted that Rule 6(e) “contains no exception” that would permit such disclosure, but courts have provided Rule 6(e) materials to Congress under the rule’s “judicial proceeding” exception in the past,<sup>1</sup> and other exceptions may also be available.<sup>2</sup>

Third, the Committee is willing to prioritize a specific, defined set of underlying investigative and evidentiary materials for immediate production. As indicated in item two of the Committee’s subpoena, the Committee has a heightened interest in obtaining access to the investigative and evidentiary materials specifically cited in the report. This discrete and readily identifiable set of documents includes reports from witness interviews (commonly known as “302s”) and items such as contemporaneous notes taken by witnesses of relevant events. Since these materials are publicly cited and described in the Mueller report, there can be no question about the Committee’s need for and right to this underlying evidence in order to independently evaluate the facts that Special Counsel Mueller uncovered and fulfill our constitutional duties. As the Mueller report makes clear, this need is amplified where, as here, Department policy prohibits the indictment of a sitting President and instead relies upon Congress to evaluate whether constitutional remedies are appropriate. In addition, to the extent these materials are classified or contain sensitive law enforcement information, we are prepared to maintain their confidentiality as we regularly do with similar information.

Fourth, as we have already indicated in the instructions to the subpoena, we are also prepared to discuss limiting and prioritizing our request in item three of the subpoena for other underlying evidence obtained by the Special Counsel’s office.

Accommodation requires negotiation that takes into account the legitimate interests and responsibilities of both Congress and the Department. Your proposed conditions are a departure from accommodations made by previous Attorneys General of both parties. As recently as last Congress, the Department produced more than 880,000 pages of sensitive investigative materials pertaining to its investigation of Hillary Clinton, as well as much other material relating to the then-ongoing Russia investigation. That production included highly classified material, notes from FBI interviews, internal text messages, and law enforcement memoranda. The volume of documents cited in the Special Counsel’s report is surely smaller, and the Committee is willing

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<sup>1</sup> See, e.g., *In re Grand Jury Proceedings of Grand Jury No. 81-1 (Miami)*, 669 F. Supp. 1072, 1075-76 (S.D. Fla. 1987).

<sup>2</sup> See Fed. R. Crim. P. 6(e)(3)(D) (allowing disclosure of grand jury materials “involving foreign intelligence, counterintelligence . . . , or foreign intelligence information” to “any federal law enforcement, intelligence, . . . or national security official to assist the official receiving the information in the performance of that official’s duties”); *id.* (allowing disclosure of grand jury materials relating to “a threat of attack or other grave hostile acts of a foreign power or its agent . . . , or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by its agent” to “any appropriate federal . . . official”).

to work with the Department to prioritize production of materials even within that defined category. Additionally, in the most recent prior instance in which the Department conducted an investigation of a sitting President, Kenneth Starr produced a 445-page report to Congress along with 18 boxes of accompanying evidence.

Lastly, it cannot go unremarked that, in refusing to comply with congressional oversight requests, the Department has repeatedly asserted that Congress's requests do not serve "legitimate" purposes. This is not the Department's judgment to make. Congress's constitutional, oversight and legislative interest in investigating misconduct by the President and his associates cannot be disputed. The Committee has ample jurisdiction under House Rule X(1) to conduct oversight of the Department, undertake necessary investigations, and consider legislation regarding the federal obstruction of justice statutes, campaign-related crimes, and special counsel investigations, among other things.

The Committee is prepared to make every realistic effort to reach an accommodation with the Department. But if the Department persists in its baseless refusal to comply with a validly issued subpoena, the Committee will move to contempt proceedings and seek further legal recourse.

We request a response by 9 a.m. on Monday, May 6, 2019. Please do not hesitate to contact us if you have any questions.

Sincerely,

A handwritten signature in blue ink, reading "Jerrold Nadler", is written over a horizontal line.

Jerrold Nadler  
Chairman

House Committee on the Judiciary

cc: The Hon. Doug Collins  
Ranking Member, House Committee on the Judiciary



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit O**

RPTR JOHNSON

EDTR ZAMORA

LESSONS FROM THE MUELLER REPORT, PART III:

"CONSTITUTIONAL PROCESSES FOR ADDRESSING  
PRESIDENTIAL MISCONDUCT"

Friday, July 12, 2019

House of Representatives,  
Committee on the Judiciary,  
Washington, D.C.

The committee met, pursuant to call, at 9:10 a.m., in Room 2141, Rayburn House Office Building, Hon. Jerrold Nadler [chairman of the committee] presiding.

Present: Representatives Nadler, Lofgren, Jackson Lee, Cohen, Johnson of Georgia, Deutch, Bass, Cicilline, Swalwell, Lieu, Raskin, Jayapal, Demings, Scanlon, Garcia, Neguse, Stanton, Dean, Mucarsel-Powell, Escobar, Collins, Gohmert, Jordan, Gaetz, Johnson of Louisiana, Biggs, McClintock, Lesko, Cline, Armstrong, and Steube.

Staff Present: Arya Hariharan, Deputy Chief Oversight Counsel; David Greengrass, Senior Counsel; Lisette Morton, Director Policy,

Planning and Member Services; Madeline Strasser, Chief Clerk; Moh Sharma, Member Services and Outreach Advisor; Susan Jensen, Parliamentarian/Senior Counsel; Sophie Brill, Counsel; Matt Morgan, Counsel; Brendan Belair, Minority Staff Director; Bobby Parmiter, Minority Deputy Staff Director/Chief Counsel; Jon Ferro, Minority Parliamentarian/General Counsel; Paul Taylor, Minority Chief Counsel, Constitution Subcommittee; and Andrea Woodard, Minority Professional Staff Member.

Chairman Nadler. The Judiciary Committee will please come to order. Without objection, the chair is authorized to declare recesses of the committee at any time.

We welcome everyone to today's hearing on Lessons from the Mueller Report, Part III: Constitutional Processes for Addressing Presidential Misconduct.

I will now recognize myself for an opening statement.

The title of today's hearing is Lessons from the Mueller Report, Part III: Constitutional Processes for Addressing Presidential Misconduct. As many of you may already know, the subtitle is a quote taken directly from Volume II of the Mueller report where the special counsel describes why he did not reach a, quote, prosecutorial judgment, close quote, regarding President Trump's conduct.

There the special counsel explained that as an attorney operating within the Department of Justice, he is bound by Department policy, including an Office of Legal Counsel opinion that asserts that a President is immune from prosecution while in office.

The special counsel, quote, recognized that a Federal criminal accusation against a sitting President would place burdens on the -- undue burdens on the -- or burdens on the President's capacity to govern, close quote. Yet the Mueller report also acknowledged that such an accusation could, quote, potentially preempt constitutional processes for addressing Presidential misconduct, close quote.

The special counsel's mention of these constitutional processes

should not be taken lightly. It goes to the heart of Congress' role in our constitutional system of checks and balances, and that is the subject of today's hearing.

As the Mueller report's frequent references to Congress make clear, Congress has a role in investigating the potential Presidential misconduct he uncovered so that it may determine how best to exercise its Article I authorities to act as check on the abuse or misuse of executive branch power.

In light of its jurisdiction and past precedent, this committee in particular has a constitutional duty to investigate allegations of misconduct by executive branch officials, including the President of the United States, and is currently investigating allegations of abuse of power, public corruption, and obstruction of justice within the Trump administration.

The purpose of this hearing is to examine the range of constitutional remedies available for addressing Presidential misconduct under its authority Article I authorities. Today's discussion will aid the committee in determining the remedies available to it as the investigation unfolds.

Under its Article I authorities, Congress has a number of responses to Presidential misconduct available to it. With regard to the committee's responsibility to determine whether to recommend Articles of Impeachment against the President, Articles of Impeachment are already -- I'm sorry -- Articles of Impeachment are under consideration as part of the committee's investigation, although no

final determination has made.

In addition, the committee has the authority to recommend its own Articles of Impeachment for consideration by the full House of Representatives.

The committee seeks documentary evidence and intends to conduct hearings with Mr. McGahn and other critical witnesses testifying before us. That is necessary to determine whether the committee should recommend Articles of Impeachment or any other Article I remedies, and, if so, in what form.

The committee is also considering other responses to the conduct under investigation. While censure of the President is rare, Congress has previously passed measures expressing disagreement with specific Presidential conduct. The committee is considering several pieces of legislation that would address the allegations of misconduct uncovered by the special counsel's investigation and other serious policy concerns raised by the Mueller report.

Legislative proposals to determine misconduct described in the Mueller report include measures that would increase transparency with regard to White House communications concerning law enforcement investigations. Those proposals also include measures to impose additional safeguards to protect the integrity and independence of future special counsel investigations.

The committee also has been referred proposals to amend the Constitution to limit the scope of executive clemency and legislation to increase transparency regarding Presidential pardons, which

responds to additional fact patterns described in the report.

Volume I of the Mueller report also documented numerous troubling contacts between the Trump campaign and individuals associated with the Russian Government. As a result, several Members have introduced legislation that would impose a duty on campaigns to report their contacts with foreign governments.

With regard to possible criminal, civil, or administrative referrals, the Justice Department has discretion as to whether to act upon a referral by Congress for prosecution or civil enforcement. As even DOJ policy acknowledges, a President is not immune from criminal prosecution after leaving office, and I have introduced legislation that would toll the statute of limitations on Federal offenses during a President's term in office.

State authorities may also enforce State laws against the President. The congressional referral process serves the important purpose of creating a record and preserving evidence for such time as prosecution, civil enforcement, or other administrative response is feasible.

The committee cannot, however, determine which Article I remedies are appropriate without first ascertaining all of the relevant facts, and it cannot do so when the administration refuses to cooperate with legitimate congressional oversight. That is why today's hearing will also give the committee the opportunity to consider the lawfulness of the administration's efforts to limit congressional oversight requests.

The Trump administration has asserted that several current and former government officials are, quote, absolutely immune, unquote, from having to comply with congressional subpoenas for testimony. However, the only court to ever consider such claims rejected them in a case involving this very committee's past effort to seek information about inappropriate White House involvement in the firing of several U.S. attorneys.

In addition to asserting claims of absolute immunity, in quotes, the White House has instructed several witnesses not to comply with the committee's duly issued subpoenas for documents or to answer questions on the basis that the documents and answers are subject to executive privilege or would otherwise, quote, implicate constitutionally based executive branch confidentiality interests, close quote. Needless to say, these assertions raise a host of problematic legal and constitutional issues.

We have a distinguished panel of witnesses who can help us sort through the various constitutional processes implicated by the Mueller report, and I look forward to hearing their testimony.

It is now my pleasure to recognize the ranking member of the Judiciary Committee, the gentleman from Georgia, Mr. Collins, for his opening statement.

[The statement of Chairman Nadler follows:]

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Mr. Collins. Thank you, Mr. Chairman.

I was sorry I was -- for a moment, I was -- you ever have one of those dreams, and there have been movies about this. You have a dream that you wake up and you're back in school, you're back in high school. For me, it was back in Ms. McCall's class in North Hall High School government, American Government class. And it's the proper role of government and the different checks and balances and, you know, what is Congress' role and what's the President's role and what's the judiciary's role.

We can stop this hearing right now, because the chairman just laid out all of the congressional routes and avenues that Congress has to it. And we're going to have a time -- and I'm glad the panel's here. Y'all are great folks. You've got scholarly work. We're going to hear some, you know, wonderful things. But we've stopped right here. The problem is we're just dragging this on.

It's not that you want to come to impeachment. The chairman talked about impeachment. If that's what you want to do, then that's the part -- we don't need to discuss is this a constitutional right of Congress to do impeachment. That is exactly what Congress' right to do. The constitutional processes are very well addressed in the Constitution and in our processes.

But instead, we come here today to have another almost impeachment hearing but not an impeachment hearing. We want to get facts; we want to do this. No, we're just waiting on and on.

I'm trapped back in 9th grade. Ms. McCall was a wonderful teacher, but I don't want to go back through it again. This is black and white. We know this problem here.

So what are we not doing? Instead of this morning at 9 o'clock on a Friday, on a fly-out day, when we are actually -- the chairman and I have a bill on the floor here in just a little bit that actually touches real people's lives in New York from the 9/11 fund, which is a very valid thing that we need to be doing.

Yesterday, we spent this entire committee time arguing over subpoenas and the discussion on the border, but yet why wouldn't we use this 9 o'clock time to actually have a markup of actual immigration bills such as mine that addresses border issues? Now, you may discuss agree with what I propose, but that's what markups are for. That's what actually is taking this time. And you have a bill. Put your bills up. Let's actually get to actually solving real issues instead of having theoretical college discussions on what is Congress' power. If we don't know what Congress' power is now, this hearing is not going to help us. In fact, it's ridiculous.

Legislation. I agree with the chairman. The chairman talked about election -- which actually the Mueller report actually found election interference. Why aren't we putting those bills forward instead of having our authority taken over by the House Admin Committee on election bills because they don't want to run it through here? Let's solve problems.

Process. Here's our biggest thing from yesterday. And maybe

this is it, is what the process is. We know what the process is. The majority just can't find their way to figure out what they want to do with that process.

And so next week, we have Robert Mueller coming in here, and the whole bottom row is disenfranchised, for the most part. I guess there is some more negotiations going on. I've read that in the media. Maybe I need to call Chairman Schiff and make sure that that was okay, because they were undoubtedly driving this ship, because they all get to talk next week. My side doesn't and neither does the Democratic side get to talk. It disenfranchises Florida, it disenfranchises North Dakota, it disenfranchises everyone.

But instead of that, we're doing this. It just, frankly, boggles the mind. But I will say this: If there's anybody on this committee -- and there are very wonderful people on both sides of this committee who are very, very intelligent. And you can ask your questions today, and we can talk about the constitutional process, and you have got some great folks here to talk to you about it.

But in all due respect, we know what the constitutional process is here. We just want to dance around it so we can keep another round of stories going that the Judiciary Committee is pursuing harassment and doing what it needs to do to make sure this administration is held accountable because we don't like him.

The economy is good, life is going better, and we don't like it because we don't like the November 2016 election. That's all this is about. We found that out again yesterday. We're going to find it out

again this morning.

So for everybody who didn't get to the wonderful ability to be in Ms. McCall's 9th grade American Government class at North Hall High School, this may be your opportunity. Get your hornbooks out, get your study books out. This is going to be a constitutional process of what we already know is our processes, but we're going to have some experts tell us what those processes are.

Mr. Chairman, there's a lot of things you could be calling today. This isn't one of them. Why don't we actually take up real legislation to fix the border crisis, to fix the issues that we all talk up about here? Instead, we have hearings.

Our body is to actually legislate. You and I have legislated before. Let's start legislating and stop the show. But it is again -- the popcorn is cooking. It's time, as I've always said, let the show begin.

I yield back.

[The statement of Mr. Collins follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Chairman Nadler. Thank you, Mr. Collins.

And I will now introduce today's witnesses.

Caroline Fredrickson is president of the American Constitutional Society for Law and Policy. Previously, she was the director of the American Civil Liberty Union's Washington legislative office, held various positions in the Senate and served in the Clinton administration.

Ms. Fredrickson received her JD from Columbia Law School, in my district, and her BA from Yale University.

John Eastman is the Henry Salvatori Professor of Law and Community Service and the former dean at Chapman University's Dale Fowler School of Law. He also serves as director of the Center for Constitutional Jurisprudence at the Claremont Institute. Previously, Dr. Eastman served as a law clerk to Justice Clarence Thomas and to Judge J. Michael Luttig.

Dr. Eastman received his Ph.D. from Claremont Graduate School, his JD from the University of Chicago Law School, and his BA from the University of Dallas.

Michael Gerhardt is the Samuel Ashe Distinguished Professor in Constitutional Law at the University of North Carolina School of Law in Chapel Hill. Professor Gerhardt served on then President-elect Bill Clinton's Justice Department transition team and drafted the administration's judicial selection policy. He later served as special counsel to the Clinton administration and the Senate Judiciary

Committee.

Professor Gerhardt received his JD from the University of Chicago Law School, his MS from the London School of Economics, and his BA from Yale University.

We welcome our distinguished witnesses, and we thank you for participating in today's hearing.

Now if you would please rise, I'll begin by swearing you in.

Would you raise your right hands.

Do you swear or affirm under penalty of perjury the testimony you're about to give is true and correct, to the best of your knowledge, information, and belief, so help you God?

Thank you.

Let the record show the witnesses answered in the affirmative. And thank you and please be seated.

Please note that your written statements will be entered into the record in its entirety. Accordingly, I ask that you summarize your testimony in 5 minutes. To help you stay within that time, there's a timing light on your table. When the light switches from green to yellow, you have 1 minute to conclude your testimony. When the light turns red, it signals your 5 minutes have expired.

Mr. Fredrickson, you may begin -- Ms. Fredrickson -- I'm sorry -- you may begin.

TESTIMONY OF CAROLINE FREDRICKSON, PRESIDENT, AMERICAN CONSTITUTION SOCIETY; JOHN EASTMAN, HENRY SALVATORI PROFESSOR OF LAW AND COMMUNITY SERVICE AND DIRECTOR, CENTER FOR CONSTITUTIONAL JURISPRUDENCE, CHAPMAN UNIVERSITY, FOWLER SCHOOL OF LAW; AND MICHAEL GERHARDT, SAMUEL ASHE DISTINGUISHED PROFESSOR IN CONSTITUTIONAL LAW, THE UNIVERSITY OF NORTH CAROLINA SCHOOL OF LAW

TESTIMONY OF CAROLINE FREDRICKSON

Ms. Fredrickson. Good morning. Thank you, Mr. Chairman.

My name is Caroline Fredrickson. I'm the president of the American Constitution Society.

ACS has worked to promote informed public evaluation of the investigations into Russian interference in the 2016 election. It is with this background that I'm pleased to testify on the constitutional processes for addressing Presidential misconduct.

The final report issued by Special Counsel Robert Mueller on Russian interference in the 2016 election reached several chilling conclusions. Russia conducted wide-ranging attacks on our Nation's election system. The Trump campaign had multiple contacts with Russian nationals and did not report these interactions to U.S. authorities. And there's substantial evidence that President Trump repeatedly attempted to thwart the investigation, including through his unheeded requests to the White House Counsel to fire the special

counsel, create a false paper trail, and make public misrepresentations regarding this incident.

To say these findings are troubling is an understatement. It is Congress' constitutional duty to respond. Close examination of how Russia executed these interference strategies is necessary to inform this committee and other committees of jurisdiction how to best tailor a wide range of legislative initiatives on subjects from electronic data protections to the provision of additional funding or resources for U.S. agencies responsible for monitoring and investigating foreign interference, to the integrity of special counsel inquiries, to ensuring limits on political interference with Department of Justice decisionmaking.

Although congressional oversight might eventually lead to impeachment, it does not have to do so. The Supreme Court has long held that Congress' oversight authorities are inherent in the Article I legislative powers. These authorities are broad and encompass matters including, quote, the administration of existing laws, proposed or possibly needed statutes, and probes to expose corruption, inefficiency, and waste. Indeed, the Court has emphasized that oversight is essential to the conduct of government.

This committee has additional constitutional authorities to conduct oversight, under Article I, Section 2, stating that the House of Representatives has the sole power of impeachment.

Congressional investigations often lead to new laws, but some investigations have led Congress to conclude that enacting new laws



is not necessary to address issues identified in the inquiry. Sometimes congressional oversight has led to executive branch reforms. Other times, inquiries into alleged administration corruption have resulted in resignations, referrals, House or Senate resolutions memorializing disapproval of Presidential or other administration misconduct, or impeachment proceedings.

Congressional oversight history is replete with investigations into alleged White House misconduct that did not involve impeachment. Many involved testimony from top White House aides, including White House counsels, chiefs of staff to the President, National Security Advisors, and top advisors to the Vice President and First Lady. Impeachment proceedings have begun without any formal vote of the House.

In addition, for Presidential impeachments, the Judiciary Committee has conducted hearings to determine whether or not to recommend articles to the full House. In the impeachment of President Nixon, the House Judiciary Committee had been considering Articles of Impeachment for close to a year before there was a full House vote in February 1974.

With respect to the Mueller report and related information, several key unanswered questions demand rigorous congressional review. For example, how can Congress best protect our elections from future attacks by Russia or other hostile nations? Why did Trump campaign officials, associates, and then-candidate Trump continue to have contact with Russians after becoming aware of the hacking? Why did

some lie to investigators about these contacts, and why did they suggest publicly that Trump, quote, had nothing to do with Russia? Does the substantial evidence of obstruction of justice and other misconduct merit further congressional action, including legislation, censure, impeachment, or referrals? And finally, does the content behind the Mueller report redactions and gaps in evidence suggest any additional wrongdoing by the President or others?

Congress' job has been made substantially harder by the administration's intransigence in resisting congressional oversight at every turn, instructing officials to disobey congressional subpoenas, and invoking broad claims of executive privilege. And it has gone so far as to claim that this committee even lacks authority to investigate these matters in the first instance.

Given the gravity of the Mueller report conclusions and the related information that has emerged publicly to date, a failure by Congress to examine these issues would constitute an abdication of Congress' fundamental constitutional oversight responsibilities.

Thank you.

[The statement of Ms. Fredrickson follows:]

\*\*\*\*\* INSERT 1-1 \*\*\*\*\*

Chairman Nadler. Thank you.

Dr. Eastman.

#### TESTIMONY OF JOHN EASTMAN

Mr. Eastman. Thank you, Chairman Nadler and members of the committee. I'm delighted to be here to participate in this hearing.

But before turning to the substance of my remarks and addressing the precise question you've posed, I think it's important to take issue with the underlying assumption of the hearing contained in the full title of this hearing.

By tying the question of Presidential misconduct to the Mueller report, you imply that the Mueller report identified Presidential misconduct that should trigger whatever constitutional processes might be available. As a factual matter, I could not disagree more, for I do not find anything in that report even remotely rising to the level that would trigger the one constitutional path designed to address Presidential misconduct, and that's impeachment.

I should also note that this is not the first time the judiciary -- a congressional judiciary committee has considered this question. In 1998, the Senate Judiciary Committee, Subcommittee on the Constitution, held a hearing on impeachment or indictment. I commend the proceedings of that hearing to your attention, particularly the extremely persuasive testimony and submitted scholarly work of Yale

law professor, Akhil Amar. The conclusion he reached then is the same one I reach now, and it is the same one that has been reached by the Office of Legal Counsel in both Democrat and Republican administrations spanning nearly a half a century.

Because of the unique role the Constitution assigns to the Office of President, a sitting President cannot be indicted. That does not place the President above the law, as some have claimed, but it does recognize that the sole remedy envisioned by the Constitution for illegal conduct by a President, while he is President, is the impeachment process outlined in Article I, Section 3.

As Professor Amar so aptly put it, the grand jury in such a case is the House, the indictment is the Articles of Impeachment, and the Senate is the petit jury.

I won't go through the -- the conclusions of those two OLC reports, other than to very quickly summarize them. The notion that the President can be himself a criminal defendant in a Federal prosecution would put him on both sides of the criminal prosecution. He is, after all, the Chief Executive of the Nation, responsible for the prosecutorial function of the Federal Government.

It's also true that he has unique official duties that no one else in the government has, most of which, as the OLC report in 2000 under the Clinton administration acknowledged, most of which cannot be exercised by anybody else. That strongly counseled them, both OLCs, to conclude that the President could not -- not only not be tried or incarcerated if convicted, but not even indicted, because it would

amount to such a fundamental intrusion on his executive duties, and therefore, impact greatly the entire Nation.

But there's a third thing that the OLC report in 2000 offered that I think is even more dispositive: The President's role as guardian and executor of the 4-year popular mandate expressed in the most recent balloting for the Presidency. To allow a single prosecutor or a single grand jury regionally drawn in someplace in the country the ability to incapacitate a President who had been chosen through a national election by the people -- by the whole people of the United States is really contrary to our basic system of government. That's why the OLC concluded the decision to terminate the mandate is more fittingly handled by the Congress than by a jury.

And I think I want to close by looking at those OLC reports. They focus on the fact that the impeachment process is done by elected Members of Congress who are politically accountable. And it's that piece that I want to focus on. Because if there is indeed anything in the Mueller report that rises to the level of treason, bribery, or other high crimes and misdemeanors, then the Members of this body will likely be held accountable politically if the House does not initiate impeachment proceedings.

But the flip side of that coin is also true. If, as I believe is clearly the case, nothing identified in the Mueller report remotely rises to that level, then the Members of this body who continue to pursue impeachment investigations and even formal impeachment proceedings that manifestly appear to the public to be an attempt to distract the

President from the performance of his constitutional duties, or worse, to negate the results of the 2000 election, then they too should be and likely will be held politically accountable. That's why the Constitution assigns this awesome oversight authority to this body, but it comes with a political accountability that flows from that.

We can get into the question and answer about the specific instances, but I think that the various instances that are alleged for obstruction of justice or Russia collusion pale in comparison to some of the things we know occurred by the prior administration. And it's that level of comparison that I think the American people will ultimately choose to make as the political accountability for this committee and every Member of the House of Representative if they continue to pursue these things.

Thank you for your attention.

[The statement of Mr. Eastman follows:]

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Chairman Nadler. Thank you.

Professor Gerhardt.

#### TESTIMONY OF MICHAEL GERHARDT

Mr. Gerhardt. Thank you, Mr. Chairman.

It's an honor to be here today and an honor to participate in today's hearings and to be a part of an important discussion about constitutional processes for Presidential misconduct.

A good place to begin our discussion, I believe, is with the Supreme Court's decision in Nixon v. Fitzgerald, a 1982 decision by the Supreme Court that held that the President is immune to civil lawsuits seeking damages based on his official conduct.

Near the end of its opinion, the Supreme Court talks about -- recognizes a number of other ways in which the Constitution allows for the President to be held accountable for his misconduct.

There are formal mechanisms, for example, such as impeachment, such as congressional oversight, such as popular elections, that allows for considerable opportunity and, in fact, legitimacy for this committee and Congress to consider which, if any, possible ways it wants to consider for holding a President accountable for his misconduct.

There's long history here, but let me cut to the chase. The first mechanism, congressional oversight, is, of course, a longstanding legitimacy. The Constitution does not require that this house follow

any particular procedures in trying to determine whether or not and how it may hold a President accountable for his misconduct. In fact, just the opposite.

Article I, Section 5 of the Constitution vests each body of Congress -- the House, the Senate -- with the authority to determine its own internal rules of governance. The committee today is doing nothing more than following through in -- following through in accordance with the House rules. That's all that's happening. It's as simple as that.

Besides congressional oversight, there are, as we recognize, other mechanisms. One of them, of course, is impeachment. I won't dally on that right now, but one thing to recognize about the possibility of impeachment is that the House, and particularly this committee, is fully entitled to consider what evidence there may be on whether a President committed misconduct, but also, what other evidence needs to be determined in order to reach a decision about whether or not to proceed further on any particular process relating to Presidential misconduct. It's that simple.

The Constitution does not require a series of hoops that this committee has to go through in order to make its determinations about what, if anything, to do with Presidential misconduct. Just the opposite, as I said. The Constitution vests considerable authority in each Chamber to determine its rules of governance, and here the committee's following through on that.

Another mechanism we haven't discussed but could is censure. I



have longed believed that censure is a legitimate option for this committee to consider, if and when it encounters or finds that a President or any other official has engaged in misconduct. The authority isn't just derived from the fact the Constitution doesn't disallow censure; the authority is established by longstanding traditions and exercise of power within this body.

For example, when Abraham Lincoln was a Member of the House of Representatives, he introduced a resolution criticizing President Polk's initiating, in his opinion, the illegal Mexican War. His resolution didn't pass, but he did vote for a resolution that did pass 82-81 holding President Polk accountable for unnecessarily initiating an unlawful war.

That's good enough for me. If President Lincoln thinks it's good enough for the House, I think it's longstanding authority we can follow.

Other mechanisms, of course, involve possible lawsuits. Civil lawsuits based on unofficial misconduct have been recognized, in *Clinton v. Jones*, as legitimate and they may proceed. In addition, of course, there may be the possibility of criminal trials.

One thing to understand about the possibility of criminal trials is, as Dr. Eastman just suggested, that there's a longstanding debate of whether or not a sitting President may be subject to criminal process. I believe so. I've set forth my arguments in my written statement. I won't expound on them here, but I'm happy to answer questions about it.

And, of course, the -- a final thing I hope you'll allow me to

just finish with is something that Raoul Berger, long recognized as one of the great authorities on impeachment, said 30 years ago in The New York Times. He said by refusing to comply with the subpoenas of the House Judiciary Committee, President Clinton is setting himself above the Constitution. No President is above the law. No President can use his authority or any of his powers to thwart the powers of this body and therefore to be above and beyond any accountability to the law.

Thank you very much for the opportunity to be here today.

[The statement of Mr. Gerhardt follows:]

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Chairman Nadler. The committee will now stand in recess for 5 minutes, and Democratic members will meet over here and the Republican members on their side.

This will be a 5-minute recess.

[Recess.]

Ms. Scanlon. [Presiding.] The committee will now resume.

And we'll now proceed under the 5-minute rule with questions, and I'll begin by recognizing Mr. Collins.

Mr. Collins. And I thank the chairwoman for doing that. We've got to go to the floor and take up the 9/11 bill, so I appreciate that. And I won't be long.

But, Mr. Eastman, let's talk just for a moment. Do you think there's any possibility that this group of attorneys and nonattorneys on this Judiciary Committee have any -- or their staffs have any problem understanding the constitutional role of Congress and oversight of the administration, on any administration?

Mr. Eastman. I don't know the background of every member, but I think the usual member ought to know the answer to that.

Mr. Collins. And that would come from just, if nothing else, life growing up and taking, you know, government classes growing up, correct?

One of the things I want to be interested in -- and there's a lot of things that people will talk about today, and we'll get into a lot of different things. But one of the problems that I've had here -- and

we talk about constitutional process. We also talk and the professor here talked about our internal processes and going on. And one of the things that I've just been very disappointed in our committee for the last 6 months is our way we handle subpoenas and the way that we have went through contempt and how we have rushed through this process and how we've instead of -- you're familiar with subpoenas, correct?

Mr. Eastman. Yes.

Mr. Collins. And how they should operate. Has a subpoena ever been -- and from a perception that you ever had, could a -- would a Black's Law Dictionary of a subpoena say that it is an opening to a dialogue?

Mr. Eastman. No.

Mr. Collins. Would it ever be said that a subpoena should be to enhance your standing in court?

Mr. Eastman. No.

Mr. Collins. Okay. If that be true, then my question is, do you believe that it hurts us as an institution when we rush through these issues of contempt and subpoena? And I would love for you to talk about that for a minute.

Mr. Eastman. Well, look, you know, I want to take up -- I agree with most of what Professor Gerhardt said. The one point of disagreement I have is I don't think he gave enough credit to the notion that these fights over congressional subpoenas and congressional testimonies by the executive are ones that arise out of a deliberate design function of the Constitution, which is a separation and a

counterbalance of powers.

Yes, the Congress has oversight authority, but there are limits to that authority, and those limits we typically classify generally as executive privilege. And so most of the fights in our Nation's history over the issuance of subpoenas and the testimony of high-ranking executive officials deal with that counterbalancing authority that the executive has. Congress cannot, in its oversight capacity, intrude on the executive functions, including the confidentiality of Presidential communications. And I think that's well established as well.

And the fight, then, is over whether these current round of subpoenas and demands for testimony are really designed to intrude on the executive in an unconstitutional way. And I think that's where the conversation has to focus.

Mr. Collins. You talk about conversation and dialogue. And this is one of the things that I've been in Congress, not my life, but the last 6-1/2 years, and I've noticed the battles that go between both Democrat and Republican administrations in the Hill. This has been going on forever.

Do you believe it's good -- and I've got several questions. Do you believe it's good for a committee just to lead, with no conversation with an individual, to lead with a subpoena?

Mr. Eastman. I don't. I think there's a lot of negotiation that has historically gone on on those issues.

Mr. Collins. And we went to the floor for contempt on very

limited terms, especially with the Attorney General in a shortened time here.

The question that I would have here is -- if you look at this from a judge's perspective, when they say -- and we talk about -- and by the way, this committee seems to be unique in this, because other committees, such as the Intel Committee, actually negotiated and began to get stuff in the proper way of back and forth and back and forth. When we go to -- if we were to try and enforce one of these contempts that we have done with lack of foundation, lack of background, do you believe it hurts this committee and this institution as a whole?

Mr. Eastman. I think it would certainly undermine the claims in the court that the subpoenas or the efforts were made in good faith, and that would certainly undermine any -- any court's plan on giving enforcement effort to those things.

Mr. Collins. I appreciate it. I know in my home county of Hall County, my judges would look at me and say go back and do your job before you bring it to me.

So with that, I do appreciate the chair's indulgence. And with that, I'll yield back.

Ms. Scanlon. Okay. Thank you.

The chair recognizes Representative Lofgren for 5 minutes.

Ms. Lofgren. Thanks very much.

I think this is an important hearing. I noted the ranking member's comment that we should be taking up other subjects instead of this one. And I can't help but recall that the Democrats, in terms

of election security, as a first order of business, introduced H.R. 1 about election security and got no help from the minority party. And my own bill, the SAFE Act, that we just passed 2 weeks ago to harden election systems got only one Republican vote. So I think that's a bit disingenuous.

Let me talk about the OLC opinion. I've been interested in that for some time, and I'm wondering whether, Ms. Fredrickson or Mr. Gerhardt, you believe that the OLC opinion would cover activities -- criminal activities for any President that occurred prior to that President assuming office.

For example, Spiro Agnew was -- left his position for bribery that was engaged in while he was in Maryland, before he was Vice President.

What is your view on that?

Ms. Fredrickson. Well, I think -- just say two quick things, and then I think Professor Gerhardt probably has a more thorough answer.

It's a -- one thing is that I think the Vice President is not covered.

Ms. Lofgren. No, I understand that. I just meant that as an example.

Ms. Fredrickson. But I think that's just one of the weaknesses of the OLC opinion, is it does seem to indicate that -- insulate a President from judicial process in a way that I think is not consistent with the rule of law as understood by the Founders.

Ms. Lofgren. One of the questions I've had, if I can throw at you, in addition, Professor Gerhardt, is, is there any limit to this?

Let's say some day in the future, President A is annoyed with the Vice President, pulls out a gun, shoots the Vice President in the head in the Oval Office. That would be a Federal crime. Would that President A in the future be immune from prosecution?

Mr. Gerhardt. I hope -- I hope not. And I respectfully disagree with the OLC opinion. Obviously, OLC does fantastic work. They're not right about everything. Everybody is subject to scrutiny. And in this case, I think they got it wrong.

I've long thought that the President is not special. Everybody in government is subject to criminal process. And should anybody in government commit a crime, they're not entitled to any immunity. I think that's the Constitution we have.

In fact, to go back to your earlier question about whether or not a President -- we can just -- let's keep it hypothetical -- commits a crime before he is elected and nobody knows about it. If we find out about it later, it's -- it becomes almost absurd to imagine that the country has to somehow sit tight for 4 or 8 years until he leaves office before he is subject to a criminal trial. If that crime has any relationship to his election, and it almost certainly does because it would have affected people's votes to know about it, then I think the Constitution gets turned on its head.

Ms. Lofgren. Let me ask you this. In terms of the OLC opinion, obviously they're just looking at Federal prosecutions. We have 50 States. If the President A shoots somebody who is not a Federal official, in a State, that would be a violation of State law.



Would -- do you believe that the Constitution prohibits a State prosecution of a President for a State law violation?

Mr. Gerhardt. I don't believe it does, but I also should just point out, for the record, that this committee and this House of Representatives has confronted this issue already, to some extent, in the case of Thomas Porteous.

Ms. Lofgren. Right.

Mr. Gerhardt. Thomas Porteous was a Federal district judge who nobody knew --

Ms. Lofgren. We were on the committee during the impeachment, so --

Mr. Gerhardt. I won't go into details, if you don't want, but I think they're quite pertinent. The point is he committed criminal misconduct before he entered his office as a Federal district judge. He didn't tell the Senate about it, and that turned out basically to be fraud against the Senate and was the basis for his impeachment.

Ms. Lofgren. Let me just ask a final question. If the DOJ opinion is correct, it seems a logical extension is that the Federal prosecutors could not be expected to actually investigate a President.

When you think back to the Nixon impeachment, Jaworski was -- you know, provided information to the Congress. Certainly, Ken Starr provided us information. I was on the committee at that time. Presumably, that would not be permitted if you could not prosecute a sitting President.

Is that -- what do you think of that?

Ms. Scanlon. Time has expired, but you can answer.

Mr. Gerhardt. Well, I think if a prosecutor finds evidence of obstruction, for example, then that may be an appropriate time to consider the propriety and legitimacy of criminal process.

I think that no one -- the very principle of no one being above the law means just what it says. Nobody's above the law. A President can't obstruct an impeachment, you know, a House committee looking into the possibility of whatever misconduct he has committed, because if he could do that, then he really is above the law.

Ms. Lofgren. Thank you. My time has expired.

Ms. Scanlon. Thank you.

The chair recognizes the gentleman from Florida for 5 minutes.

Mr. Gaetz. Thank you, Madam Chair.

Mr. Eastman, you've commented on the potential harms that can come with a special counsel that's unbridled. Is there anything you'd like to add to that?

Mr. Eastman. Well, I mean, you know, I want to pick up on something that Professor Gerhardt said, the notion that the President would be above the law. One of the things that has troubled me about the OLC opinions, which I think are correct, is that potential criminal liability may not exist at all for a sitting President for conduct either -- criminal conduct either while in office or before, given the statute of limitations problems.

Both OLC memos recommended to Congress that they could address that issue, and I would encourage you to do so. That would ensure that

no President is above the law at the end of the day. But it would also ensure -- and I think this is what the OLC memos are both based on, and they would apply whether the criminal conduct occurred while in office or before -- the unique responsibilities of the President in our system of government and the ability of a single prosecutor or a single grand jury to interfere with that. And I think that's why the OLC memos are correct.

But to remedy the one shortcoming from that, you could address the statute of limitations thing. And I think Chairman Nadler in his opening statement mentioned that that was one of the things that might be worth considering. And I would endorse that.

I do think, though, that the reasoning of the OLC memos, implicitly in the first one and explicitly in the second, also extends, although for different -- not separation of powers reasons, but for federalism reasons, to State authorities being able to indict the President. And I think they're right about that as well. That door is closed as well for the same reasons that a Federal indictment against the President, while he is sitting, is closed.

And I think that's right. It's a balancing act. But the balance, given the unique nature of the President's role and the unique nature of his election, the only one, save for the Vice President, who is elected nationally, those two things have contributed to this immunity that OLCs of both sides of the political aisle have recognized, like I said earlier, over a span of 50 years.

That doesn't keep the President off the hook, but it does shift

the discussion to a politically accountable body where people can be held to account if they abuse the investigative process.

Mr. Gaetz. You made mention of the President's unique powers and how they interface with an analysis of proper versus improper conduct, and you also make reference to the dealing with Director Comey. Is there anything you'd like to add on that front?

Mr. Eastman. Well, you know, something that Chairman Nadler said in his opening that I disagree with, and I think is important to get out here, one of the pieces of legislation that is being considered is to expose White House communications with the Department of Justice to identify whether the President is having any role in prosecutorial decisions. I think that idea fundamentally misunderstands the nature of Article II of the Constitution, which says the executive power, all of it, is vested in the President of the United States.

The Attorney General, in its prosecutorial functions at the Department of Justice, holds that power derivatively from the President. The FBI, in its investigative power, holds that power derivatively from the President. The notion that the President can't be the one to make the prosecutorial or the investigative decisions is to completely undermine that core aspect of Article II. And so I think that idea is just simply misguided.

Now, if the President decided that Director Comey -- and I outline in my testimony why I think both sides of the political aisle in Congress were upset enough with Mr. Comey to have warranted removing him long before the President did, but the President had that authority himself.

And, you know, I don't think that -- exercising an authority that he constitutionally has rises to the level of obstruction of justice.

Mr. Gaetz. Thank you, Madam Chair. I yield back.

Ms. Scanlon. The chair recognizes the gentlewoman from Texas for 5 minutes.

Ms. Jackson Lee. I thank the chair very much.

I'm going to read partly a statement by the former -- by former Federal prosecutors. And I would also like to add, having been here in 1998 and also for a number of impeachment proceedings regarding Federal judges, when Mr. Starr handed our friends on the other side of the aisle the Starr report, they immediately began impeachment proceedings. That was the historical record that was created. I don't know if they were concerned about any factual basis other than the Starr report.

In this instance, we are meticulously listening to scholars and interviewing individuals by way of subpoena and building -- the building blocks of the constitutional process and as well the building blocks of the understanding of the American people.

Each of us believes that the conduct of President Trump described in Special Counsel Robert Mueller's report would, in the case of any other person not covered by the Office of Legal Counsel policy against indicting a sitting President, result in multiple felony charges for obstruction of justice. They recount the President's efforts to fire Mueller and to falsify evidence about that report, about that effort, the President's efforts to limit the scope of Mueller's investigation

to exclude his conduct, and the President's effort to prevent witnesses from cooperating with investigators probing him and his campaign.

Professor Fredrickson, do you find agreement with 1,025 prosecutors, the possibility of such?

Ms. Fredrickson. Well, I have to say I've never been a prosecutor, but I think it's a very impressive list of some of our Nation's most illustrative prosecutors who have engaged in lengthy careers. And I think -- I take what they say very seriously. I think it is very important for this committee to go further and examine the allegations that were laid out in the Mueller report.

Ms. Jackson Lee. Thank you.

And I ask the chairwoman to ask unanimous consent to place the statement by former Federal prosecutors, part of what I just read, 1,025 indicate that the President would be subject to felony charges if he was not the President of the United States.

Let me also make mention --

Ms. Scanlon. Without objection.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Ms. Jackson Lee. Thank you very much -- of H. Res. 396, Resolution of Investigation, Professor Gerhardt -- and welcome to all of you, by the way, thank you so very much for your presence. It recounts -- it's under our rules 6 and 7 of House practices -- it is an instruction for the Judiciary Committee to investigate. But included in the resolution, it indicates various elements of investigation, violation of the Foreign Emoluments Clause of the United States Constitution, violation of the Domestic Emoluments Clause of the United States Constitution, obstruction of justice, abuse of power, misfeasance in public office, malfeasance in public office, failure to protect the confidentiality of national secrets from enemies, foreign and domestic -- just a litany similar almost to one -- Articles of Impeachment.

But let me ask you this. In your written testimony, you note that the theme that clearly emerges from early discussions of the scope of impeachable offenses are that they are not neatly delineated but depend on context and gravity, of which the responsibility of this is housed in the Judiciary Committee, and not all crimes are impeachable and not all impeachable offenses are crimes.

But I would ask you, is impeachment limited to criminal acts?

Mr. Gerhardt. Not at all, Congresswoman. In fact, it's important to understand that one of the most -- that a significant theme in the Constitutional Convention was that when the delegates thought of possible impeachable offenses, they were trying to figure out the

scope of them. They never listed something that wasn't actually a crime; they listed things that were not crimes. And, in fact, many impeachments have been based on things that are not crimes.

Ms. Jackson Lee. I'm going to go on to another -- can a President be impeached for conduct related to improper exercise of his Article II powers, such as removing a subordinate Federal officer? And let me add, would all communications between the President and, say, the Department of Justice always be protected, always be not subject to review or suggesting that they were inappropriate?

Mr. Gerhardt. I think it's an overreach to suggest the President somehow can insulate all his communications with anybody from congressional inquiry. That essentially makes the Presidency unaccountable.

Ms. Jackson Lee. And so can he be impeached for the improper exercise of Article II?

Mr. Gerhardt. Absolutely.

Ms. Jackson Lee. And can the President be impeached at least partly on his conduct or her conduct before assuming office?

Mr. Gerhardt. I believe if -- I've suggested both through my statement and other writings that I think a Presidency could be subject to impeachment for that.

Ms. Jackson Lee. And, clearly, the Mueller report, in Volume I, has talked about a number of incidences dealing with the Russian intrusion into our elections that seemingly this administration and the Office of the President was involved in.



Mr. Gerhardt. At the very least, this committee is entitled to look into things. So you have got the Mueller report. The Mueller report obviously contains a lot of different things, such as possible acts of obstruction of justice. It's quite reasonable and legitimate for a committee -- for this particular committee to look at that and to ask whether or not more investigation is needed.

There is nothing in the Constitution that precludes the committee. In fact, there's a lot in the Constitution that supports this committee looking at that material and deciding whether or not it does provide evidence of misconduct or whether or not it needs more evidence.

Ms. Jackson Lee. I thank the chairwoman. I yield back.

RPTR WARREN

EDTR ZAMORA

[10:16 a.m.]

Ms. Scanlon. Okay. Thank you.

The chair recognizes the gentleman from California.

Mr. McClintock. I thank you, Madam Chairman.

Dr. Eastman, the more that comes out on the Mueller report, the more I become concerned that it appears to me that they couldn't make a legal case against the President. So they decided instead to try to make a political case, and they did so by seriously misrepresenting the evidence that they had. Give you a few examples.

The John Dowd conversation, the President's lawyer, calls Robert Kelner, Michael Flynn's lawyer. The Mueller report quotes only a small portion of the conversation that leaves the impression that Dowd's trying to influence testimony. It deliberately omitted a very large part of the conversation where Dowd made it absolutely crystal clear that it was not what he was suggesting.

Another example. Konstantin Kilimnik is repeatedly referenced as a Russian Government operative in his interactions with Paul Manafort. What Mueller knew but failed to mention in his report was that Kilimnik was, in fact, a U.S. intelligence asset.

There was an article just published in The Federalist. It notes the recent developments in the Concord case that involves the Internet Research Agency, the internet troll farm at the center of the Russian

Government interference narrative. The judge in that case asked prosecutors to address also the specific tie to the Russian Government, and the DOJ responded the report doesn't say that. It was that next day that Mueller held his press conference where he walked back the linkage that he had made between the Russian Government and the internet troll farms.

So I have to tell you, having reviewed some of the material behind the report, I'm concerned this report seriously misrepresents the supporting evidence that it's supposed to be based upon. So I'd like to hear your opinion of the nature of the report itself and what does it say of the integrity of the report if exculpatory evidence was deliberately omitted from that report.

Mr. Eastman. Congressman McClintock, we've seen a number of stories about the political biases of the members of Mr. Mueller's team that have, you know, occupied our Nation's attention for some time now, and I think one of the allegations that the President attempted to obstruct judges was his alleged direction to White House Counsel Don McGahn to notify Deputy Attorney General Rod Rosenstein to fire Mueller because of his alleged conflict of interest. And I think this is critical and I think it may well full explain why we don't have in that report some of the triggering events that led to the report that any competent investigation would have explored.

And Department of Justice guidelines specifically say that people ought not to be leading an investigation when they have personal -- close, personal relationships with targets or key

witnesses of the investigation or with an organization of the investigation, and Mr. Mueller had both. He had very close, personal relationships with FBI Director Comey who, of course, whose own leak of information to The New York Times is what triggered the appointment of Mr. Mueller in the first place and who was a key witness in one of the allegations against the President about, you know, can you see your way to letting the case drop against Mr. Flynn? He suffered enough. He had a close relationship with Mr. Rosenstein who was a signer on one of the FISA warrants that triggered the whole Russia collusion story in the first place.

Those things alone ought to have forced Mr. Mueller to recuse himself because they are conflicts of interest that would have not led to his appointment under Department of Justice guidelines in the first place. For the President as the top national executive to raise the question about those conflicts is not obstruction of justice; it's doing his job. If he had said, because of that conflict, we're going to shut down the whole investigation because I don't like it going after me, then you might have had obstruction of justice, but that's not what we have here.

And the perpetuation of this myth is rising to the level of farce, and it is distracting, not only the President and the country domestically, but on the world stage. In fact, we are perilously close to the ongoing proceedings here rising to this very same level that is why the Department of Justice has over a half a century twice concluded the President ought not to be indicted while he's in office.

They recognize that the impeachment proceeding is a necessary evil that would suffer those consequences but on things that are much more grave than we have at issue here.

Mr. McClintock. Is it fair to say that this report was corrupted both by personal relationships and by political biases?

Mr. Eastman. When you see the things that are omitted from it, that's the conclusion that one has to go.

Mr. McClintock. And this is, so far, just the tip of the iceberg. They're dribbling out all the time and of grave concern.

Mr. Eastman. And I think when Mr. Horowitz' full IG report comes out on the origins of this thing, I think we're going to be shocked to learn how much more there is.

Mr. McClintock. Thank you.

Ms. Scanlon. The chair recognizes the gentleman from Tennessee for 5 minutes.

Mr. Cohen. Thank you, Madam Chair.

Firstly, I'd just like to comment the question about exculpatory evidence being put in and questioning Mr. Mueller's compliance. Mr. Mueller made clear that he did not suggest the President should be indicted or was indicted because of the OLC's opinion that he couldn't be indicted. That's pretty much dealing -- taking exculpatory evidence when you put that in. We're not indicting him because we can't do it, not because we didn't find evidence of criminal activity; and if we did, we would have said so. So that's firstly.

And, secondly, the question about his closeness to Mr. Rosenstein

and Mr. Comey. He was also close to Mr. Barr. So maybe Mr. Barr shouldn't have taken the job.

Although existing regulations governing the appointment and removal of a special counsel already provides some limitations on the removal of the Attorney General, those can be rescinded or modified because they're the Attorney General's regulations. They can modify those protections against unwarranted removal.

The chair has introduced a bill, H.R. 197, that's called the Special Counsel Independence and Integrity Act, which would codify those protections and would permit the special counsel who believes his or her removal was unlawful to contest that removal in court.

Ms. Fredrickson, what are the benefits of enacting the current protections that the Department has for unwarranted removal of a special counsel and make them statutory law?

Ms. Fredrickson. Thank you so much for the question. So, I mean, I think there are a number of benefits, and one is it's clear that the Attorney General could repeal the existing regulations, and there was quite a bit of worry that that might happen. I know -- I believe Senator Graham on the Senate side has introduced a partner to this legislation for the very same reasons, that the regulations lay out some important protections for the independence of the special counsel but they're not enough because they're not actually insulated from action by an Attorney General who might himself want to see, or herself, want to see an investigation curtailed. So I think it's an important piece of legislation to consider.

I did also just want to go back to the prior question regarding the factual disputes and the accusation that Special Counsel Mueller was biased and omitted important information. You know, I don't want to speak to that, but I do want to say it seems to me that that's actually an extremely strong reason, if people believe that, to want to get as much of this information into the public hands as possible but certainly into for this committee to review.

Mr. Cohen. I'm sure we'll do that.

How would providing a special counsel a private right of action to contest his or her unlawful removal deter some of the conduct described in the Mueller report?

Ms. Fredrickson. Well, I mean, I think that, you know, to have some kind of a legal recourse to ensure that a special counsel isn't removed for less than good cause, I think, is an important mechanism to protect that authority and to protect the integrity of an investigation that might be necessary.

Mr. Cohen. And then maybe some of the instances that were cited in the report that might amount to obstruction of justice wouldn't have occurred because they would have known that they could -- Mr. Mueller could have gone to court to contest those in an open hearing.

Ms. Fredrickson. Absolutely. And I think Mr. Mueller laid out numerous examples of where he was thwarted along the way and was threatened that if he had had some additional legal recourse --

Mr. Cohen. And let me ask. We're going to run out of time. You've read the Mueller report, have you not?

Ms. Fredrickson. Yes.

Mr. Cohen. All right. How many instances of obstruction of justice do you believe were shown where all three elements of obstruction of justice were met?

Ms. Fredrickson. Well, I think the report itself describes it in extremely good detail, but there are certainly several examples dealing with the efforts to get the White House Counsel to fire Mr. Mueller.

Mr. Cohen. That's one. And then telling Mr. McGahn to lie about it?

Ms. Fredrickson. Telling him to lie about it and to tell him to create a fake paper trail. I think all of those are --

Mr. Cohen. What are some others?

Ms. Fredrickson. The effort -- the removal of the FBI Director. There are --

Mr. Cohen. Asking Mr. Sessions to unrecuse himself?

Ms. Fredrickson. Exactly. Or asking Corey Lewandowski to go to the Attorney General to tell him to resign, holding the resignation letter for future use.

Mr. Cohen. So you don't have a specific number. That's at least four or five. Do you think there are seven or eight or four or five or 10, or how many do you think there are?

Ms. Fredrickson. Well, you know, I think that is something for this committee to consider is --

Mr. Cohen. Thank you.



Professor Gerhardt, do you have an opinion on how many there are?

Mr. Gerhardt. I'm sorry. I missed part of the --

Mr. Cohen. How many cases of obstruction of justice were in the Mueller report that you think all elements were met?

Mr. Gerhardt. While I've read it, I can't say off the top of my head how many instances there are, but I do think it's important to recognize that there is certainly evidence of possible obstruction in there. There's no question about that.

The report doesn't exonerate the President. Instead, it actually suggests at several moments that one of the processes that's important to consider, given the limitations the prosecutor felt that were imposed on him, was for Congress or this committee to look into possible evidence of misconduct. That's perfectly within the power and legitimacy of this committee.

Mr. Cohen. Thank you.

And I yield back the time I do not have.

Ms. Scanlon. Thank you.

The chair recognizes the gentleman from Texas for 5 minutes.

Mr. Gohmert. Thank you. I appreciate y'all being here.

Dr. Eastman, in looking at page 2 -- well, it's page 2 because you had a cover sheet, but talks about you're not -- you implied -- you're talking about the title of this hearing, that the Mueller report identified Presidential misconduct that would trigger whatever constitutional process might have been available. As a factual matter, I could not disagree more. I don't find anything

remotely rising to the level that would trigger the one constitutional path designed to address Presidential misconduct, namely impeachment.

But I want to take you back to the prior administration, something that was called Fast and Furious. We know crimes were committed. We had people within our Justice Department who forced people to sell guns that we knew the sales constituted a crime because we knew they were going to end up in criminal hands, and they were required to do it and we know at least one Federal agent was killed as a result. Somebody somewhere in the Justice Department had to say, we're not going to -- we're not going to prosecute that. We're not going to investigate it. We know what happened. And, of course, some of us here that reviewed e-mails that were disclosed, made public thanks to Judicial Watch, there were crimes being committed and nobody prosecuted.

During the Clinton administration, my U.S. Attorney friends back in Texas were telling me they'd been given -- and I couldn't tell you, some of them -- I couldn't tell you whether they vote Democrat or Republican, but I know they cared about justice. But they were saying they'd been directed, let's back off of the pursuit of drug crimes. Let's start pursuing white-collar crime. They got that directive.

Somebody within the Department of Justice who knew there were crimes, drug crimes being committed with regard to Fast and Furious, knew crimes were committed and at least one Federal agent died, had directed, we're not going to pursue those. Just leave them alone. This is where we want to concentrate, because obviously, no Department

of Justice can pursue every single crime.

In your opinion, just knowing what we know from the public information, would you say Eric Holder or President Obama, his boss, obstructed justice?

Mr. Eastman. Congressman, I think there's an important distinction to be made here --

Mr. Gohmert. Exactly.

Mr. Eastman. -- between prosecutorial discretion and shielding high-ranking officials. I've outlined in my testimony several other examples --

Mr. Gohmert. But the drug -- shifting from drug prosecution to white-collar crime, that's prosecutorial discretion.

Mr. Eastman. That's right. But preventing an investigation in order to shield the person that committed the crime because he was a high-ranking official or to alter the FBI investigative report on the advent of the email personal server and Hillary Clinton's conduct, to remove the language of one of the elements of the crime, I think that rises to obstruction of justice rather than prosecutorial discretion.

Mr. Gohmert. So you're talking about when James Comey eliminated the mental state necessary --

Mr. Eastman. The -- he said mental state was an element; it was not. The FBI original draft of the report called it gross negligence, which is an element of the crime. He changed that language in order to avoid the element of the crime. That's not prosecutorial discretion. I think those things do rise and have an intent to obstruct

or interfere with the investigation.

Mr. Gohmert. Well, that brings up another issue. You know, Mueller was required to -- or we know -- I'm not supposed to really get into the scopes memos I've reviewed, but -- well, at least some of them. But we know publicly he was allowed to pursue things that -- crimes that came to his attention during the investigation.

Hillary Clinton's emails, private server, disclosure of classified information, those surely came to his attention. He would have been authorized, just from what you know publicly, to pursue and investigate Hillary Clinton, would he not?

Mr. Eastman. Well, he would. And even more directly, the use of campaign funds funneled through a law firm illegally, not reported to the Federal Election Commission, to pay for the Steele dossier, which we now know had as his sources high Russian-level officials that triggered the entire narrative, that certainly was within his jurisdiction, and that's not investigated at all.

Mr. Gohmert. Yes. Well, I appreciate the effort that you took. I know all three of you got paid well for being here today.

Mr. Eastman. I missed that.

Mr. Gohmert. And for those that don't know that, didn't get paid at all. But thank you all for the time you took to prepare. Thank you.

Ms. Scanlon. The chair recognizes Mr. Johnson from Georgia --

Mr. Johnson of Georgia. I thank the chairwoman.

Ms. Scanlon. -- for 5 minutes.

Mr. Johnson of Georgia. And I've heard more and more Republicans starting to pronounce Director Mueller's name as Mueller. I've been hearing that over the past few weeks. Is that some kind of Republican attempt to somehow besmirch Director Mueller? Dr. Eastman?

Mr. Eastman. No. Maybe it's bit of my German heritage. My mother's maiden name was Stein, and the Mueller is the German pronunciation.

Mr. Johnson of Georgia. It's Mueller, and I've heard so many people saying Mueller on the other side. It just seems like there's something that -- there's some kind of secret memo flowing out there.

But, listen, you are a -- an officer. You are the chairman of The Federalist Society's Federalism & Separation of Powers Practice Group, are you not?

Mr. Eastman. I am, Congressman.

Mr. Johnson of Georgia. And so there's no doubt that you are a Republican or perhaps a Libertarian, but I suspect more Republican.

Mr. Eastman. The Federalist Society is a nonpartisan organization.

Mr. Johnson of Georgia. And it raises about \$20 million a year for its various purposes, correct?

Mr. Eastman. I've not looked into the budget of the Federal Society. I'm a chairman of one of its practice groups.

Mr. Johnson of Georgia. I understand.

Mr. Eastman. And I should say that I'm not here speaking on behalf of The Federalist Society.

Mr. Johnson of Georgia. Certainly. Certainly.

And you're familiar with Director Mueller and his reputation. You know that he is a former Marine officer, that he has practiced law both in government, outside of government, former U.S. attorney, United States Assistant Attorney General for the Criminal Division, a homicide prosecutor in Washington, D.C. He's been the Acting United States Deputy Attorney General and he's been appointed to Senate-confirmed positions by Presidents George Herbert Walker Bush, Bill Clinton, George W. Bush, and Barack Obama. And he's a Republican too.

You're familiar with that, right?

Mr. Eastman. I know he's got a long resume. I didn't know he was a Republican.

Mr. Johnson of Georgia. You didn't know he was a registered Republican?

Mr. Eastman. It doesn't matter on my criticism of the report.

Mr. Johnson of Georgia. Well, I mean, a man of that kind of distinction, you do -- you may disagree with some of the conclusions that he reached, but you have no -- you have no problem with his truthfulness and veracity, do you?

Mr. Eastman. Congressman, I have a real problem with his flipping the burden of proof in Part II of the volume.

Mr. Johnson of Georgia. That's not my question. My question, you believe him to be a man of good character?

Mr. Eastman. I don't know his character. I've never met the

man. I will say this --

Mr. Johnson of Georgia. Let me ask --

Mr. Eastman. -- he staffed his office with people --

Mr. Johnson of Georgia. Let me ask this.

Mr. Eastman. -- who had an obvious political bias, and that's troubling to me.

Mr. Johnson of Georgia. Let me ask you this. You're at a congressional hearing, the title of the hearing being about the various constitutional processes for addressing Presidential misconduct.

Now, certainly this hearing that we're having today, you don't think we're overstepping our bounds by having this hearing, do you?

Mr. Eastman. I do. I have never said that Congress doesn't have oversight authority.

Mr. Johnson of Georgia. But, I mean --

Mr. Eastman. But it can be abused, and I think --

Mr. Johnson of Georgia. For this hearing, you think that we're overstepping?

Mr. Eastman. I do. This matter has become a farce.

Mr. Johnson of Georgia. Well, question --

Mr. Eastman. It has become a farce.

Mr. Johnson of Georgia. Question asked and answered. Okay.  
Thank you.

Let me ask Professor Gerhardt. Sir, in your written testimony, you note that the theme that clearly emerges from early discussions of the scope of impeachable offenses are that they are not neatly

delineated but depend on context and gravity, and that you say also that not all crimes are impeachable and not all impeachable offenses are crimes.

I want to ask you this question: Is impeachment limited only to criminal acts?

Mr. Gerhardt. Not at all. If you'll allow me, I just want to make sort of two points to clarify a couple of things. The first is I've not been paid at all. I've got three kids, one in college. It would be great, you know, but --

Mr. Johnson of Georgia. You're not being paid either to be here, right?

Mr. Gerhardt. I'm not being paid to come here. I'm not being paid to be here. It's an honor.

The second point I just want to make is that kind of follows a little bit from what you've just suggested is a concern I have, and that is if the President -- and I think that concern has been sort of overshadowed by the efforts to deflect the attention away from the purpose of this hearing.

But if the President of the United States can remove the special prosecutor, not comply with lawful subpoenas, and is immune to criminal prosecution while he's in office, that's the definition of being above the law.

Mr. Johnson of Georgia. Thank you.

And I yield back.

Ms. Scanlon. And the chair recognizes the gentleman from



Virginia for 5 minutes.

Mr. Cline. Thank you, Madam Chair.

And I want to thank our witnesses for taking the time out of their schedules, without pay, to be here today to participate in this exercise. I want to also apologize to them because this is little more than an attempt, a blatant attempt to keep on life support this ongoing impeachment by any other name. And as you can see from the audience, which is half full and the committee which is half full, I'm -- there are other things going on on the Hill today that are of importance as well. There's a hearing about the border that is down the hall. I think that is a critical issue about the humanitarian crisis going on at the border. I would like to see this committee use its jurisdiction to look into the humanitarian crisis that's going on at the border.

I see the TV cameras here, and I want to apologize to people at home who've tuned in and think they're looking at a repeat of a past hearing because, no, it's not a repeat. It's just the same pundits, journalists, and academics here opining about Volume I or Volume II of the Mueller report, not moving the ball forward at all, just really spinning the wheels of this committee, using up time and using up resources to come to no conclusion, other than the fact that the Democrats want to impeach this President but they don't have really enough to go on in the Mueller report. And there are other issues that are of primary importance facing this country that are being addressed by other committees around this Congress.

And as a member of this committee, I worked hard to get on this

committee. It is very disappointing to me that we continue just to spin the wheels of this committee.

So, Professor Eastman, I will ask you, as a former prosecutor, I was very confused by Volume II and the Mueller report, 400 pages of no charges, no recommendations for charges. Robert Mueller determined he could not exonerate President Trump of the allegations that he obstructed justice.

I've never seen this as a prosecutor. Have you ever seen a prosecutor use that line of logic?

Mr. Eastman. No, I haven't. And that's my fundamental disagreement with Part II. It reassigns the burden of proof to the object of the investigation having to prove his innocence, rather than the prosecutor having to demonstrate guilt beyond a reasonable doubt. And that violates one of our most fundamental precepts of fairness and justice in the criminal justice system, the presumption of innocence.

For him to have said that the President couldn't convince me he didn't do any of this, when his job was to determine whether he had enough information to bring an indictment or to present to this body things that would lead to either an impeachment or a post President-in-office indictment, that's what his job was. And I think that is the greatest flaw in Volume II of the Mueller report.

Mr. Cline. So in our systems, prosecutors either indict or not indict, and leave it at that.

So Mueller here is putting the burden on the President to prove his innocence instead of the burden being on Mueller to prove his guilt.

Professor Eastman, can a President obstruct justice by simply exercising his Article II powers?

Mr. Eastman. That's a close question. The reason it's close and the reason I'm hesitating and not giving you an unqualified no is if the President exercised his powers with a deliberate intent to prevent -- but we have no evidence of his intent here at all. What we do have is documented in the report itself, things like, can you clear the way to let Flynn go because he suffered enough. That's perfectly within the President's authority, and there's no even hint of bad intent there. Can you get rid of Mueller because of his conflicts of interest? No bad intent; that's clearly within the President's authority.

Mr. Cline. When Bill Clinton tried to alter witness testimony before a grand jury, that --

Mr. Eastman. That had the necessary intent and was rightly troubling. Deliberately changing an FBI report to remove an element of a crime of trafficking into classified information in order to shield the Presidential candidate I prefer, that's an obstruction of justice with the requisite intent.

Mr. Cline. Section 4 of Article II says the President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

Do you see anything in Volume II that rises to that level?

Mr. Eastman. I do not, because I don't see anything in there that

demonstrates a requisite intent that would otherwise alter the President's perfect authority to control the executive branch.

Mr. Cline. Thank you.

I yield back.

Ms. Scanlon. The chair recognizes the gentleman from Florida for 5 minutes.

Mr. Deutch. Thank you, Madam Chairman.

Thanks to all the witnesses for being here.

Mr. Gerhardt, your testimony describes several categories of formal remedies for Presidential misconduct: congressional oversight activities, impeachment, censure, election, civil suits, criminal trials.

Was Special Counsel Mueller able to pursue any of these remedies for potential misconduct by President Trump?

Mr. Gerhardt. No, he was not. He was not in the sense of being able to do anything more than issue his report.

Mr. Deutch. His investigation, just to be clear, was a criminal investigation, right?

Mr. Gerhardt. Right. It certainly was, yes.

Mr. Deutch. And if he found criminal wrongdoing by the President, could he pursue a trial?

Mr. Gerhardt. He could, or he might have thought he might be able to, but he was also -- he also plainly felt, as he said, that he was restricted by Department of Justice policy on this.

Mr. Deutch. Well, he said he was restricted by the OLC policy,

didn't he?

Mr. Gerhardt. Right. That's what I'm saying, yeah.

Mr. Deutch. Right. So Presidential misconduct uncovered by Mueller didn't come with an inherent remedy, did it?

Mr. Gerhardt. No, it did not come with an inherent remedy.

Mr. Deutch. So the Mueller report itself, the Mueller report itself was never going to hold the President of the United States accountable?

Mr. Gerhardt. That is absolutely true. And, in fact, a couple of times, a couple of key times when discussing obstruction of justice, he mentions Congress.

Mr. Deutch. Right. So if -- exactly. So, Mr. Gerhardt, if the special counsel cannot hold the President accountable, who can?

Mr. Gerhardt. The answer is nobody.

Mr. Deutch. Nobody can hold the President accountable?

Mr. Gerhardt. Well, that is to say if the President -- I may have misunderstood.

Mr. Deutch. Mr. Gerhardt, Congress can hold the President accountable, can't it?

Mr. Gerhardt. Of course. And I just --

Mr. Deutch. Right. I just wanted to clarify that.

Mr. Gerhardt. Yeah.

Mr. Deutch. Ms. Fredrickson, in your testimony, you note that special counsel couldn't exonerate President Trump, but he also couldn't proceed with a criminal remedy because he accepted the OLC

policy that a sitting President cannot be indicted.

Without those options, what did Mr. Mueller do in his report?

Ms. Fredrickson. Well, I think he did the appropriate thing, which was to refer to Congress to pursue its constitutional processes, which is, in fact, what this committee is doing now.

Mr. Deutch. Right. So you -- he conducted the investigation. He preserved evidence. He provided analysis of that. And then, as you quote from the report and as you've just said now, the separation of powers doctrine authorizes Congress to protect official proceedings including, those of courts and grand juries, from corrupt, obstructive acts, regardless of their source. Further, Special Counsel Mueller closes Volume II by stating, and I quote, the protection of the criminal justice system from corrupt acts by any person, including the President, accords with the fundamental principle of our government that no person in this country is so high that he is above the law.

Ms. Fredrickson, do you read these sections of the report as a referral to Congress to pick up where Mr. Mueller left off?

Ms. Fredrickson. Well, I certainly read it as a -- as saying to Congress that there is important -- this was -- these allegations are incredibly disturbing, indicate actions by the President and his associates that are very destructive to rule of law and that Congress needs to examine. I think it has a congressional duty to --

Mr. Deutch. Thank you very much.

Mr. Gerhardt, on May 30, President Trump said he can't be impeached because there was no crime. It appeared he was suggesting

that he would need to be found guilty in a criminal trial in order to be impeached.

Is that how impeachment works? Is that what impeachment requires?

Mr. Gerhardt. Impeachment --

Mr. Deutch. Yes or no.

Mr. Gerhardt. Impeachment does not require what the President said.

Mr. Deutch. Right. And you described, in fact, how the Framers thought of high crimes as violations of public trust and violations of a duty to our society. Some have argued the President can't commit the crime of obstruction of justice when he's exercising his Article II powers. We've heard that here today.

Regardless of the merits of that argument in a criminal trial, isn't the corrupt use of power exactly the sort of abuse that the Framers and historical Presidents show qualified as a high crime?

Mr. Gerhardt. Absolutely. That's why we have it.

Mr. Deutch. Right. So let me finish with this.

Professor Gerhardt, we heard that impeachment proceedings have begun without any formal vote for impeachment. Who has the power to set the proceedings for this body, for Congress to implement a constitutional power such as impeachment?

Mr. Gerhardt. Congress.

Mr. Deutch. Right. And do the House rules require a formal authorization of an impeachment inquiry?

Mr. Gerhardt. Absolutely not. It doesn't say that in any place.

Mr. Deutch. Professor Gerhardt, does the United States Constitution require a formal authorization of an impeachment inquiry?

Mr. Gerhardt. Absolutely not. The words "impeachment inquiry" are not in the Constitution.

Mr. Deutch. Thank you.

I yield back.

Ms. Scanlon. Thank you.

The chair recognizes the gentleman from Louisiana for 5 minutes.

Mr. Johnson of Louisiana. Thank you, Madam Chair.

Thank you to the witnesses for being here.

Mr. Gerhardt, over here on your right. Yeah, sorry. We've got a big committee.

You said in a recent interview with The New Yorker magazine that, quote, if the President has misled people, unquote, then it could be the basis for impeachment.

President Obama made a statement that became rather famous regarding ObamaCare, and he said, quote, if you like your healthcare plan, you can keep it, unquote. It was famously called the lie of the year by PolitiFact.

So I don't mean this to be flippant. I want to ask you a question about your intellectual consistency. Is that an impeachable offense?

Mr. Gerhardt. I would not say so, and it's partly because I think the President made a mistake. Acting in good faith is pertinent to any impeachment inquiry.



Mr. Johnson of Louisiana. Well, but didn't you just explain in your last set of answers here that a violation of the public trust is an impeachable offense? I just heard you say that a few minutes ago.

Mr. Gerhardt. That's true. Absolutely true.

Mr. Johnson of Louisiana. So is that not a violation of the public trust when half of America relied upon that great promise?

Mr. Gerhardt. I don't think I would say it violated public trust. I think you need two things at least. One is you need to have -- be doing a bad act. That's one of the things required. But the other is you need to have bad intent. I think there are times when Presidents obviously are mistaken. I don't think that was a deliberate falsehood at all. I think that an inquiry would be justified any time that this committee or the House has concern about whether or not the President had said or done something with bad faith and that was a bad act.

Mr. Johnson of Louisiana. Okay. In a 1999 article that was entitled, The Lessons of Impeachment History, you quoted Alexander Hamilton in Federalist 65, and you wrote, quote, in the Federalist No. 65, Alexander Hamilton warned that impeachments often would begin in a partisan atmosphere. Consequently, Hamilton counseled the further along an impeachment proceeded, the more that Members of Congress needed to find a nonpartisan basis on which to resolve the proceedings, unquote. That's what you wrote.

Mr. Gerhardt. Yes.

Mr. Johnson of Louisiana. The Mueller report, of course, has been out for almost 3 months. As of June 30, there were 79 elected

Democrats calling for impeachment and zero Republicans. Our friend, Representative Amash, is now a registered Independent.

So the question is, if this body were to take Alexander Hamilton's advice, shouldn't impeachment be off the table at this point because there's no way that we find a nonpartisan basis to proceed?

Mr. Gerhardt. The answer is no. And part of the reason for that is because if one party decides to obstruct something, that is to say, doesn't agree, can't find common ground, that can't hamstring the institution.

Mr. Johnson of Louisiana. Wait a minute. So are you suggesting the Republicans are obstructing this now?

Mr. Gerhardt. I'm sorry if that's overstated, but the point is --

Mr. Johnson of Louisiana. It's greatly overstated. Thank you for acknowledging, yes.

Mr. Gerhardt. But the point is that if -- it may or may not begin in a partisan atmosphere. You need fact-finding. You need investigation to determine the evidence and the gravity.

Mr. Johnson of Louisiana. That's what we had with the Mueller report, right? Two years and \$30 million and endless resources to do this. Didn't we have that?

Mr. Gerhardt. Congressman, the Mueller report does not bind this committee. It does not bind --

Mr. Johnson of Louisiana. No, but that was begun in a nonpartisan manner. He was famously the objective arbiter of all this.

Let me move on.

Mr. Gerhardt. I don't think he was the supreme arbiter of this.

Mr. Johnson of Louisiana. All right. Well, I mean, we've known your true colors now when you say we're obstructing, so I guess --

Mr. Gerhardt. I'm sorry for that phraseology. But the point is that it can become a strategy, let's say, to be able to prevent bipartisanship by simply choosing not to go along if there are other political motivations for that.

Mr. Johnson of Louisiana. I got it. I'm just saying, based upon your earlier scholarship, Alexander Hamilton would want this farce to end. Okay.

Ms. Fredrickson, on March 22, 2019, your group, the American Constitution Center, issued a press release entitled, quote, Mueller Report, How far up the chain did the Trump campaign's efforts to conspire with Russia go? It quoted you. And you said, quote, the question isn't whether members of the Trump campaign conspired with Russia to sway the 2016 elections. We already know they did, unquote.

As you may know, conspiracy to commit an offense or to defraud the U.S. is a Federal crime under 18 U.S. Code, Section 371. I just want to know if you can remind this committee which members of the Trump campaign were charged and prosecuted for conspiring with Russia.

Ms. Fredrickson. Well, and first, I'd like to say that I think it's unfortunate that so many on your side of the aisle don't seem to want to get to the bottom of what happened in terms of the Russian interference in our election.

Mr. Johnson of Louisiana. To the contrary. To the contrary. Just answer the question.

Ms. Fredrickson. And that all of our intelligence agencies have indicated that there was sweeping attacks on our elections, that they were renewed in 2018 with some impact, and that there are anticipated attacks in 2020.

Mr. Johnson of Louisiana. So you disagree with the Mueller report's findings, Volume I?

Ms. Fredrickson. I think there is much more work for this Congress to do to understand what Russia has attempted, what they were successful at, and what they're planning.

Mr. Johnson of Louisiana. I got it, but I'm out of time. But just to follow up on that. So with all the vast resources, the \$30 million, the endless supply of investigators, the 500 witnesses, everything that the Mueller report had, did, and was involved in for 2 years, you think there's yet more for the people on this --

Ms. Fredrickson. I do.

Mr. Johnson of Louisiana. -- dais to dig into, right?

Ms. Fredrickson. I do. I think there were many people who had destroyed evidence. There were people who Mueller was not allowed to interview. And so I do think there's -- I mean, look, I'm deeply worried about the integrity of our elections, and I hope Congress is as well.

Mr. Johnson of Louisiana. Well, I'm deeply worried about the integrity of your organization.

Ms. Scanlon. The gentleman's time has expired.

Mr. Johnson of Louisiana. I'm out of time. I yield back.

Ms. Scanlon. The chair recognizes the gentleman from Rhode Island for 5 minutes.

Mr. Cicilline. Thank you, Ms. Fredrickson, for your last comment. I know there are many on this committee who share your concern and frustration with the obstruction from our colleagues on the other side of the aisle. And I think if Alexander Hamilton, great Founder who my friend mentioned, were alive, they would be appalled, frankly, at the conduct of this committee and their unwillingness to take on these very serious issues.

So I thank the chairman for convening this hearing on this very important question.

The hearing is entitled, Lessons from the Mueller Report: "Constitutional Processes for Addressing Presidential Misconduct."

Ms. Fredrickson, could you tell me what is the principle constitutional process available for addressing Presidential misconduct?

Mr. Eastman. I'm sorry. Was that addressed to me?

Mr. Cicilline. No, it was addressed to Ms. Fredrickson.

Ms. Fredrickson. Well, I mean, there -- Article I lays out Congress' authorities. And they're multiple, but certainly the legislative power includes oversight as an essential part of it. But also in Article I is the power to impeach. Those tools are not alternative. They're --

Mr. Cicilline. And is it fair to say impeachment is the principal process to address Presidential misconduct?

Ms. Fredrickson. I think it's one of the processes. I don't think that -- I think there's more of a continuum. As I mention in my testimony, during the Nixon -- during the Watergate hearings, there was actually -- almost a year went by before there was a referral to the full House for a vote on the articles. So I think it's hard to separate, I would say.

Mr. Cicilline. Okay. Professor.

Mr. Gerhardt. I agree. I think that I agree with everything she just said. I believe that it is completely within the discretion of this committee and the power of this committee to be able to, not just read the Mueller report, but to ask the very reasonable question whether we need to know anything else in order to undertake the constitutional responsibilities we have.

Mr. Cicilline. And related to that, many of our -- many of our -- Congress' ability to hold the President accountable rely on the executive branch providing Congress with information that it needs to legislate, to conduct oversight, or to consider remedies like impeachment or censure.

Could you begin, Ms. Fredrickson, to describe generally what the Supreme Court has said about Congress' power to conduct investigations and to collect documents and testimony, including by use of subpoena, how the Court has described our power in that context?

Ms. Fredrickson. The Court has been -- has used very sweeping

language to describe Congress' power. Again, it's inherent and the legislative power is the power to conduct oversight and investigations.

Mr. Cicilline. And the Court has, in fact, said the power to secure needed information is an attribute of the power to legislate, which is a core function of Congress.

Ms. Fredrickson. Well, exactly. I mean, Congress would not know how to respond to statutory gaps if it can't examine what the statutory gaps are.

Mr. Cicilline. And the perils of Congress being unable to do its constitutionally required work if an executive branch decides to prevent witnesses from coming forward or to instruct witnesses not to cooperate or to not make the documents available is significant.

Professor, would you speak a little bit about, Professor Gerhardt, what the consequences of that would be for Congress? I mean, we have a President, for example, who's told -- said publicly that he is going to fight all efforts by Congress to get information, that he's going to tell witnesses not to come and defy subpoenas. What are the implications of that?

Mr. Gerhardt. Well, they're not good. I mean, the implications of that is, at the very least, Congress should be concerned. Obviously, this committee should be concerned. And this committee is acting perfectly reasonably to consider what evidence -- I don't know if this has been put forward in the report or anywhere else. If I may, can I read one sentence from the report from Mr. Mueller that just goes along these lines?

He says, with respect to the President -- with respect to whether the President can be found to have obstructed justice by exercising his powers under Article II of the Constitution, we concluded that Congress has authority to prohibit a President's corrupt use of his authority in order to protect the integrity of the administration of justice.

Congress has that authority. This committee has that authority.

Mr. Cicilline. So we have had a number of examples, both with respect to the White House Counsel Don McGahn and the former White House Communications Director Hope Hicks, where the White House asserted something called -- that they claim is absolute immunity, which is basically our right to prevent you from hearing anything relevant from these witnesses.

Would that sort of obstruction that we're seeing in an effort to prevent witnesses from appearing before the committee or producing documents in and of itself be an appropriate basis for an article of impeachment against a President, if proved?

Yes, Ms. Fredrickson.

Ms. Fredrickson. Well, I think if you look again at the Nixon impeachment, you'll see that that exact kind of obstruction formed one of the articles in that.

Mr. Cicilline. And, Professor Gerhardt.

Mr. Gerhardt. Clearly, the Constitution allows this body and this committee to consider whether or not obstruction's happened. It's just important to really emphasize that it doesn't have to be a



technical violation of a statute. It still may be a problem if the President obstructs justice in any way.

Mr. Cicilline. Thank you.

I yield back, Madam Chair.

Ms. Scanlon. The chair recognizes the gentleman from California for 5 minutes.

Mr. Lieu. Thank you, Madam Chair.

Ms. Fredrickson, you were asked earlier a question about Russia. So for Special Counsel Mueller's investigation, 34 individuals were indicted. Isn't that correct?

Ms. Fredrickson. Yes, that's correct.

Mr. Lieu. And at least eight have either pled guilty or been convicted. Isn't that correct?

Ms. Fredrickson. That's correct.

Mr. Lieu. And the Mueller report identifies that Paul Manafort gave internal polling data to the Russians. Isn't that correct?

Ms. Fredrickson. That's correct.

Mr. Lieu. And the Mueller report also shows numerous contacts between Russians and Trump campaign officials. Isn't that correct?

Ms. Fredrickson. That's correct.

Mr. Lieu. And a fair reading of Volume I of the report would be that the Trump campaign knew about the Russian interference, welcomed it, embraced it, gave them internal information, and knew it was going to help Donald Trump win the election. Isn't that correct?

Ms. Fredrickson. That is correct.

Mr. Lieu. Okay. Let's move to Volume II now which focuses on obstruction of justice. In the Nixon impeachment hearings, the first article of impeachment, what was that on? It was obstruction of justice, wasn't it?

Ms. Fredrickson. It was obstruction, yes.

Mr. Lieu. All right. Obstruction of justice, certainly under the Nixon hearings, was important enough to be the very first article of impeachment. So if there was obstruction of justice related to Donald Trump, that would also certainly qualify as important enough to be an article of impeachment if it was established, correct?

Ms. Fredrickson. It certainly could be.

Mr. Lieu. Okay. Let me talk to you now, Professor Gerhardt, about the obstruction we're seeing from the Trump administration to congressional oversight investigations. And it's not just on the Mueller report; it's on everything. So we want to know, for example, why is the Trump administration supporting the lawsuit to eliminate healthcare coverage for Americans with preexisting conditions? We can't get that information. We wanted to know why did Trump officials lie about the census? We couldn't get that information. We can't even get witnesses simply to show up here even under subpoena.

And the Trump administration is asserting something called absolute immunity. No court has ever found that, correct?

Mr. Gerhardt. No court has ever found that the President has kind of absolute immunity you're talking about, no.

Mr. Lieu. Okay. So given the assertions of this sort of fake

immunity, do you agree that if these witnesses don't show up, they would be subject, not just to the lawful subpoena, but also to any potential other consequences, and that they themselves would be liable for not showing up?

Mr. Gerhardt. Absolutely. And the committee and the chair have the power to issue subpoenas. Subpoenas are lawful orders. And it's a question of whether or not they're complying with the law when they're considering whether or not to comply with the subpoena.

Mr. Lieu. Okay. And then let's talk specifically again about obstruction of justice. The Mueller report lays out multiple instances of obstruction of justice. And then the special counsel goes, all right, here's three elements to establish obstruction of justice. And in multiple cases, he shows that there's significant evidence of all three elements. Isn't that correct?

Mr. Gerhardt. Right.

Mr. Lieu. And on the issue of intent, you can certainly infer intent from the very words of Donald Trump. Isn't that right?

Mr. Gerhardt. Well, you can infer intent from words, from circumstances, from context.

Mr. Lieu. And when Trump fired Comey, he stated that he was receiving great pressure from the Russia investigation and that that pressure's been taken off. That's certainly evidence of intent, isn't it?

Mr. Gerhardt. It's perfectly reasonable to wonder about what's going on when he says something like that, yes.

Mr. Lieu. When the President goes on national TV and says he fired Comey because of the Russia thing, that's certainly evidence of intent, isn't it?

Mr. Gerhardt. It could be evidence of intent, absolutely. It's certainly the statement of something that sounds like obstruction.

Mr. Lieu. When the President orders one of their senior officials to create a fake document, that's certainly evidence of intent?

Mr. Gerhardt. I'm sorry. I missed that.

Mr. Lieu. When the President orders one of his officials to create a fake document, that's certainly evidence of intent, isn't it?

Mr. Gerhardt. Yeah, that's -- that's hugely problematic. And, one, it's obstruction. And I might also go further to say that one of the consequences of vesting the President with so many entitlements, such as absolute executive privilege, absolute immunity, means that if there's any delay that relates to something criminal 4 years or longer, what happens to the evidence? That's a tremendous concern. And so that's why I have argued that I don't think the President's immune to the criminal process or other processes.

Mr. Lieu. And in the Mueller report, Special Counsel Mueller doesn't even put out any burden of proof. He doesn't shift the burden. He simply says, because I could not indict under the DOJ policy, I'm not going to make that prosecutorial judgment. Isn't that right?

Mr. Gerhardt. That's correct.

Mr. Lieu. I yield back.

Ms. Scanlon. The chair recognizes Mr. Raskin for 5 minutes.

Mr. Raskin. Madam Chair, thank you very much.

Professor Gerhardt, let me start with you. Why does the Congress have the power to impeach the President but the President doesn't have the power to dissolve the Congress or to impeach individual Members? Why does the Congress have the power to impeach justice in the Supreme Court but they don't have the power to remove Members of Congress?

Mr. Gerhardt. Well, that's all part of checks and balances. And, of course, Congress has the power, in part, because Congress is accountable politically.

Mr. Raskin. Yeah.

Mr. Gerhardt. And the idea is clearly behind those restrictions and is, as you well know, the effort to actually prevent the President or prevent the COURT from becoming all-powerful.

Mr. Raskin. Do you agree with the rhetoric of coequal branches? Every time the President tramples another constitutional right or value or principle of separation of powers, one of my colleagues would get up and say, we're coequal branches, Mr. President. Please pay attention to us.

Do you agree with that?

Mr. Gerhardt. I do agree.

Mr. Raskin. Before you go on, let me just say I disagree with it, and I want to tell you why. And I don't think it's just because I'm a Member of Congress now. When I was a professor of constitutional law, I disagreed with it. That's not the way I see the Constitution.

The Preamble starts with, We, the people, in order to form a more perfect union, and so on, established the Constitution. The very next sentence says, All legislative powers are vested in the Congress of the United States.

Then you get pages of description of what the powers of Congress are, and they are comprehensive. We have the power to declare war, to regulate domestic commerce --

Mr. Gerhard. Right.

Mr. Raskin. -- international commerce. We have the power to impeach. We have the power to control the seat of government, post office, copyright, you name it. All of it's in there.

Then for the President, the President is the Commander in Chief in times of actual conflict, and his job is to take care that the laws are faithfully executed.

So the reason I ask the question about impeachment is, don't we have the power to impeach the President because this is a representative democracy and Article I puts Congress first and the President works to implement the laws that we've adopted?

Mr. Gerhardt. I think what you've said makes imminent sense. And I don't want us to be talking past each other.

Mr. Raskin. Yeah.

Mr. Gerhardt. I think that each branch, of course, is vested with certain powers, and no other branch can interfere or undermine those powers.

Mr. Raskin. Right. But I think at least it's constitutionally

important to note that it's Congress that has the power to impeach everybody else and they don't have the power to impeach the Congress --

Mr. Gerhardt. Absolutely right.

Mr. Raskin. -- because we are elected by the people.

Mr. Gerhardt. That's correct.

Mr. Raskin. I want to ask you, Ms. Fredrickson, a question about impeachment, about law and politics. There's been a lot of confusion in the country about this. Some people say, well, look, it's very clear that there were 9 or 10 episodes of Presidential obstruction of justice. It's very clear from everything that the special counsel wrote and from what he did in sending two letters of protest to the Attorney General for misstating and distorting the contents of the report and for -- from his having a press conference to come out and say the reason that we didn't indict the President was because of the DOJ policy that we can't indict the President.

So some people are saying it's very clear there's Presidential obstruction of justice. Why doesn't Congress just go ahead and impeach? And then others say, well, you know, it's not just a legal question. It's a political question because it's invested with Article I, with Congress. It's not in the courts. The courts don't have the power to do it. Congress has to do it.

And so Members of Congress have to take into account, with everything else we're doing, with the border crisis, with trying to lower prescription drug prices. We've got to think about public opinion. We've got to think about our districts.

Are those political considerations really proper and appropriate in terms of what Congress should think about? Should we be trying to think about this just as judges or should we think about it in the context of everything else we're trying to do?

Ms. Fredrickson. I think Professor Gerhardt did an excellent job of explaining the language in the Constitution, what are high crimes and misdemeanors. And they're not necessarily crimes. They could be crimes, but they could be other types of activity that might be fully lawful but might have really harmed the fabric of the Nation. And so it's a judgment call, and it's one that Congress has to make, among all of its other responsibilities.

Mr. Raskin. Okay. Very good.

Professor Gerhardt, let me come back to you. What about the role of public opinion here? Some people have said, well, only 19 percent of the people supported impeaching Richard Nixon before the impeachment hearings got started. Forty-six percent of the people support impeachment today, which is extraordinary given that we haven't formally launched impeachment inquiry. He's never reached 50 percent in the polls. He's the only President since World War II who never has gotten up to 50 percent in his approval ratings.

Some people say, take that into account. The President has committed high crimes and misdemeanors. He's a sitting duck, and we should take that into account. Others say public opinion is irrelevant. And lots of Republicans, the majority of the Republicans still oppose it. We should take that into account instead.



What is the role of public opinion in this decision?

Mr. Gerhardt. Well, it's a great question. I think the role of public opinion is something, of course, that you should take -- you're fully entitled to take into account. It makes imminent sense for that to happen. At the same time, there are fiduciary duties within each Chamber of Congress to consider how to exercise their respective powers, and public opinion, hopefully, will support that. That's what Congress, of course, hopes for.

But as in the Watergate situation, as you just mentioned, it took a year at least to be able to figure out through an investigation, with no help from the President, on whether or not he had committed any kind of misconduct. And it's entirely possible that public opinion wouldn't necessarily support Congress or the House or any particular -- as it moves along, but the evidence might inform public opinion and it might turn around, just like it did with President Nixon.

Mr. Raskin. Finally, I have a yes-or-no question. Does anyone here think that the -- that President Clinton should have been impeached for what I consider a low crime and misdemeanor, lying about sex? Does anybody think that he -- that the House was correct in impeaching him?

Mr. Eastman. I think he was. It was not a low crime. It was --

Mr. Raskin. So yes, you believe that.

Mr. Eastman. It was obstruction of justice.

Mr. Raskin. Let me follow up with you then, Mr. Eastman.

Ms. Scanlon. Time's up.

The chair recognizes Mr. Armstrong for 5 minutes.

Mr. Armstrong. Thank you.

And I think that line of questioning is interesting in a lot of different reasons. One, I think that's where you get the distinction between political and legal, because I think lying under oath is lying under oath, and it's a political distinction as to whether or not it's a minor crime or a major crime, so -- and I think Mr. Raskin and I could have long esoteric debates about this issue in a different format.

But, Professor Eastman, just I want to go to the obstruction stuff because we were just talking about it a little bit. Do you think any of the 10 potential episodes of obstruction outlined in the Mueller report constitute obstruction of justice?

Mr. Eastman. I do not, because I don't think any of them demonstrate the necessary intent to obstruct. I think they are all well within the President's Article II authorities.

Mr. Armstrong. Well, and I have two different questions about that, and one starts with the Article II authority. And, I mean, so when you're -- I mean, the answer is any President can't be guilty of obstruction just for exercising their Article II authority. I mean, otherwise, we'd get into this whole separation of powers, and there's -- I mean, we all want the President treated like everybody else because that makes everybody sound, I mean, like it is, but there's actually real sound separation of powers and policy reasons why that's not the case.

So can you elaborate on that just a little bit?

Mr. Eastman. I agree. And I think the two OLC memos that I focus on extensively in my written testimony outline why that's the case. The President -- and I'll go back to something Mr. Raskin said. The powers given to the Congress are enumerated. The power given to the President is unenumerated. It is the executive power, the entirety of it. And the Framers of the Constitution did that deliberately because the system they had before that under the articles of confederation -- confederation was not working because we did not have an energetic executive who could execute the law both domestically and deal with anything that arose on the international scene. That's not a part of a legislative power; that is a core executive power.

Mr. Armstrong. Well, and then that goes to why that memo exists. I mean, without that memo in place and the President getting indicted, can you explain, I mean, where we end up on separation of powers and how that would affect, I mean, essentially governing structure of the United States?

Mr. Eastman. It would be fundamentally altered. Any individual prosecutor in any State or in any Federal U.S. Attorney's Office could effectively unravel the results of an election. And to think that those processes themselves won't become politicized is, I think, naive in the extreme. And I think that's why the OLC memos, both under the Nixon administration and under the Clinton administration -- I want to point out. This is a bipartisan conclusion by different administrations by the Office of Legal Counsel.

Mr. Armstrong. Now, and I want to go back to now let's assume

the OLC memo doesn't exist. Does your answer change on obstruction of justice?

Mr. Eastman. No. No. And this goes back to the earlier comment I made about I think the fundamental flaw in the analysis in Part II of the report is that it put the burden on the target of the investigation to prove his innocence, rather than the normal prosecutorial function which is to lay out a case to a grand jury -- in this case, the grand jury would be the House -- to lay out a case of why I have probable cause to bring an indictment that would lead me to think I could get, you know, proof beyond a reasonable doubt.

The standard is not criminal, I agree with Professor Gerhardt on that, but it also rises to the level of impeachment. And I don't think anything here, particularly in comparison to things we've witnessed recently in recent administrations, I don't think anything gets close to that standard.

Mr. Armstrong. Well, and so there's been a lot made -- and I practiced law in Federal court and done criminal law in my life, and one of the things is we all understand you can have obstruction even if the underlying crime doesn't exist. There is a legal way that occurs, and that is actually true. But intent becomes a huge part of this conversation. It's also true that it's very rarely charged when you find out there's not an underlying offense, and one of the reasons is is illegitimate purpose and legitimate purpose.

And under the best or worst reading of any of these 10 obstruction charges, can you -- I mean, can you find any one of those that doesn't

have a legitimate purpose?

Mr. Eastman. You know, I don't find any of them that don't have a perfectly legitimate purpose, and it's a much more plausible purpose than any of the other stories that are being spun out to try and prove that there was an illegitimate purpose.

Mr. Armstrong. Thank you.

With that, I yield back.

Ms. Scanlon. The chair recognizes the gentlewoman from Washington for 5 minutes.

Ms. Jayapal. Thank you, Madam Chair.

Ms. Fredrickson, let me start with you. In his written testimony, Dr. Eastman argues that a sitting President is immune from prosecution and that, therefore, impeachment is the only constitutional remedy for Presidential misconduct.

Do you agree that a President is immune from prosecution?

Ms. Fredrickson. No, I don't believe so. I think, you know, again, just Professor Gerhardt laid out, I think rather extensively, the arguments with the OLC memo. But, you know, I would say, however, that there is something interesting about this idea of sort of the structural arguments that make the President immune. That is it's too cumbersome on his or her, hopefully someday, responsibilities and that, therefore, we just have to then find not in the text and not in the historical information an immunity for the President.

If that were the case, we should be able to find inherent in that text as well an automatic tolling of statute of limitations for criminal

prosecutions. You should really need to pass -- have to pass legislation to do that. So I think there's -- it's certainly very disputed that the President is immune. I think there have been many scholars who have contested that, and certainly those who would also indicate that perhaps there can't be a prosecution but there could be an indictment. Would an indictment actually be that cumbersome for a President?

So I think they are very important questions. Again, I think it's indicative of how important it is for Congress to continue to examine the evidence underlying the Mueller report.

RPTR JOHNSON

EDTR ZAMORA

Ms. Jayapal. I mean, you've sort of answered this, but let me ask the question anyway for anyone who might be listening that hasn't been following.

Can a President violate Federal criminal law through his exercise of Article II powers?

Ms. Fredrickson. Oh, absolutely.

Ms. Jayapal. Okay. So, for example, could -- could a President violate Federal bribery statutes if he or she were to offer a pardon to a witness in exchange for refusing to cooperate with a Federal investigator?

Ms. Fredrickson. Yes.

Ms. Jayapal. Okay. And, Professor Gerhardt, do you agree with Dr. Eastman that the only constitutional remedy for Presidential misconduct is impeachment? Just briefly.

Mr. Gerhardt. Not at all. No, he and I respectfully disagree on that. I tried to lay out in my written statement a variety of other processes for handling or addressing Presidential misconduct. Impeachment obviously is one, but there may be others, depending upon the severity and gravity of the offense and what else this committee determines through legitimate investigation.

Ms. Jayapal. So let me turn to another subject, and I'll stay with you, Professor Gerhardt. In *Nixon v. Fitzgerald*, the Supreme

Court held that the President is entitled to absolute immunity from damages liability based on his official acts. Anticipating concerns that that finding would leave Nixon -- it would leave the Nation without sufficient -- and these are quoted words -- without sufficient protection against misconduct by the Chief Executive, and quote, the Court articulated several formal and informal checks on Presidential misconduct in addition to the constitutional remedy of impeachment.

And the Court described those checks as constant press scrutiny, vigilant oversight by Congress --

Mr. Gerhardt. Yes.

Ms. Jayapal. -- the desire to earn reelection, and the need to maintain prestige as an element of Presidential influence, and a President's traditional concern for his historical stature.

So can you elaborate on this -- this concept of informal checks?

Mr. Gerhardt. I'll try to as briefly as possible. So there are things that are spelled out in the Constitution that clearly are formal mechanisms for addressing Presidential misconduct. The quote obviously sort of mentioned those. Among them are the things you just mentioned as well, impeachment, public opinion among them. Congressional oversight's a key element of that.

But the informal checks are things that are not done by government or -- or done in any kind of official way, but they nevertheless might constrain a President. So they would include some of the things that you just mentioned.

For example, concern about maintaining influence; you know,



popularity is important for a President to succeed in office. At the same time, Presidents are in that unique position of thinking about what kind of influence or impact they'll have on the office itself or the Constitution over time. And those things might constrain them as well.

Ms. Jayapal. And let's talk about press for a second. Because President Trump has repeatedly referred to the press as the enemy of the people, but the Court in Fitzgerald named the press as a really important check on the Presidency.

Mr. Gerhardt. Yes.

Ms. Jayapal. So when you have a President who openly encourages violence against the press, praised Representative Gianforte for assaulting a reporter, regularly attacks judges who rule against his policies, and refuses to release his tax returns, what effect does that have?

Mr. Gerhardt. A terrible effect. And that's something, of course, to take into account as well. But the point you're making, I think, is a very sound one, that the press serves a very important function in this country of trying to put a spotlight on government and trying to actually allow for transparency in government. And efforts to obstruct that -- I hope I'm using the word correctly in that context -- I think would be matters of great concern.

Ms. Jayapal. Thank you, Professor.

I yield back.

Ms. Scanlon. Okay. The chair recognizes Mrs. Lesko for

5 minutes.

Mrs. Lesko. Thank you, Madam Chairman.

I have a question for Professor Eastman. And it is basically, Professor Eastman, did the Office of Legal Counsel memo that holds a sitting President cannot be indicted stop Mueller from ending his report with a suggestion that President Trump should be indicted for obstruction of justice? Was there anything preventing him from doing that?

Mr. Eastman. No, there was not.

Mrs. Lesko. And I think this has been asked before maybe, because I was in the other room in the other committee actually being a witness. But, you know, when I went -- have read through the Mueller report several times now, and what popped out to me was the thing about corrupt intent, that there was no underlying crime, no corrupt intent. I don't know if you have anything to add on that, how it would be difficult, is what Mr. Mueller said, my reading, to prove corrupt intent when there's no underlying crime.

Mr. Eastman. Well, it's difficult. I agree with Professor Gerhardt that it's not impossible. But we normally look at when there are two explanations for inaction, one's perfectly legitimate and the other a stretch to get to corrupt intent. We tend to Occam's razor, take the short path to say the legitimate one is probably the right one.

Mrs. Lesko. Well, good. And, Mr. Eastman, since I wasn't here the whole time, is there anything that hasn't been said that you would

like to add for our record?

Mr. Eastman. I think the bottom line conclusion of both OLC memos that I think is absolutely correct is precisely why they came to the conclusion that a sitting President, while he remains President, cannot be indicted, that the constitutional remedy is impeachment, because it puts the issue into a body that is itself politically accountable. And I think that is the most important piece to take away this.

If the members of this committee and of this House truly believe that the things that Mr. Mueller has identified rise to the level of high crimes and misdemeanors, you would be being derelict in your duty not to bring impeachment charges. So bring it on.

I don't think there's anything in here -- and I don't think the American people will agree that there's anything here that rises to that level.

The political accountability on that works both ways. If you don't bring actions against a President who has committed high crimes and misdemeanors, you will be held to political account. If you do pursue investigations on things that do not remotely rise to that level, you will also be held to political account. That's the beauty of our system, and I think that's why the OLC memos reach the conclusion that they do.

Mrs. Lesko. Thank you, Mr. Eastman and the other witnesses.  
And I yield back my time.

Ms. Scanlon. Thank you.

I recognize myself for 5 minutes.

Professor Gerhardt, you know, the purpose of these hearings are not just to educate Members of Congress but also the general public on topics they may not have had the opportunity to look at. So I wanted to take a couple minutes to tap your expertise as a constitutional scholar and talk about what the authors of the Constitution considered to be impeachable offenses.

We had a little bit of quotation of Alexander Hamilton in the Federalist papers earlier, but I wanted to focus on his declaration that impeachable offenses are, and I quote, those offenses which proceed from the misconduct of public men, or in other words, the abuse or violation of the public trust.

Could you comment on what the Founders of our country meant to be impeachable offenses and any examples they discuss that might be relevant to our inquiry today?

Mr. Gerhardt. Well, I'll try, certainly. Alexander Hamilton obviously gets it right; that is to say his formulation or his understanding of the scope of impeachable offenses is very consistent with what we learn from the Constitutional Convention and what we can infer from the structure of our Constitution.

So the core elements or core, I guess, paradigms of impeachable offenses become things like abuse of power, things like a breach of public trust, things that seriously injure the republic.

So those won't be limited just to technical crimes. They'll be limited to the kinds of unique things that a President is able to do.

He has the pardon power. But in the Constitutional Convention, it's mentioned that if the pardon power is used to shield somebody with whom the President is in criminal conspiracy with -- I'm paraphrasing -- that's an impeachable offense. And I think almost everybody would agree that that would be an abuse of power.

And so the terms that Mr. Hamilton used and the terms that others such as Justice James Wilson used in describing the scope of impeachable offense set up categories, if you will, set up the kinds of things that would have to be proved in order to constitute an impeachable offense.

Ms. Scanlon. Thank you.

Turning to the history of impeachment proceedings in this country, and you may have touched on this a little bit already. Given what you know of the facts laid out in the Mueller report, would it be appropriate for us to draw any parallels between the current moment and previous impeachment inquiries?

Mr. Gerhardt. Absolutely. The most obvious is obstruction of justice. There was an obstruction of justice article approved by the House Judiciary Committee against President Nixon.

I will hope that that's not serious.

Ms. Scanlon. Happens all the time.

Mr. Gerhardt. Okay. There was an impeachment article approved by the House against President Clinton.

It's well settled that obstruction of justice may provide a basis for Presidential impeachment. It's Presidential misconduct of the worst kind, invading, undermining the other branches as they try to

exercise their legitimate powers to try and make -- try and determine the President's accountability.

Ms. Scanlon. And we've heard a little bit of discussion about whether or not this particular President intended to obstruct justice. You have reviewed the Mueller report, right?

Mr. Gerhardt. I've read it, yes.

Ms. Scanlon. And you know that the President refused to answer any questions regarding the allegations of obstruction of justice, right?

Mr. Gerhardt. Right.

Ms. Scanlon. So we wouldn't have those words from his mouth unless he tweeted them.

Mr. Gerhardt. That's correct. And it's important to remember, the Mueller report doesn't just not bind this committee or the House, it doesn't displace this committee or the House. So the committee certainly has the authority to inquire into these things.

Ms. Scanlon. So I come to this proceeding with really profound concerns that misconduct by this President isn't limited to some ill-advised tweets but that his defiance of congressional subpoenas and the Constitution and the rule of law places our country in jeopardy. Call me old-fashioned, but I strongly have the opinion that the highest duty of the President is to serve the public and not to serve himself or to see how much he can get away with.

Can you speak to, you know, what our oversight or impeachment or other powers have to do with, you know, reigning in an administration

that might be defying the rule of law?

Mr. Gerhardt. They have everything to do with trying to make sure that a President is accountable under law and pursuant to the Constitution. And so I think that there -- I won't go into a long line of hypotheticals, but the important thing to understand is that it's perfectly reasonable for the committee to be able to inquire into the gravity of things, to look at evidence. And if that evidence takes them to -- if that evidence supports approval of Articles of Impeachment, that's your job to consider.

There may be a variety of different processes, and we talked about them, that may be appropriate for holding a President accountable for misconduct, and we shouldn't lose sight of all of those different things. I think all those different things empower the committee to do what it's doing.

Ms. Scanlon. Thank you.

With that, I would recognize the gentlewoman from Texas, for 5 minutes.

Ms. Garcia. Thank you, Madam Chair. And thank you to the witnesses for being here this morning.

And let me just say that, for me, it's refreshing to hear some good dialogue about the important role of Congress and the role that we have in this process, not only in oversight, as has been laid out by Professor Gerhardt, but in continuing to look at this, and Ms. Fredrickson, for you to also outline that these things do take time.

I know that the ranking member made a show of talking about the

show that he thinks this is and bringing out the popcorn, and if we're going to do an impeachment, we ought to just say it, and this is an impeachment want-to-be -- inquiry want-to-be. But we've done the opposite and met the first day -- or the second time we met and immediately gone and said it's time for impeachment, here's what we're going to do. Everybody would have said we rushed to judgment one day. So it's about striking a balance and making sure that we're thorough and that we look at everything.

And one thing that has really concerned me as a lawyer and as a former judge -- and, Professor Gerhardt, I'll ask you the question, is this whole notion of the absolute immunity. And it struck me that you said that no court has ever opined on that.

Mr. Gerhardt. Right.

Ms. Garcia. Is that because no President has ever exerted this complete absolute immunity?

Mr. Gerhardt. Immunity to criminal process?

Ms. Garcia. Yes, sir.

Mr. Gerhardt. Not yet.

Ms. Garcia. Or even from testifying. If you recall, I was -- I, for one, was totally frustrated when Hope Hicks a couple of weeks ago came to -- to testify, and she walks in with, I forget, four or five lawyers, they objected to just about every question we asked. I think they objected like about 155 times. And it was anything having to do from the beginning of her -- the minute she walks in the White House, that she has absolute immunity and she can't testify about it.



Mr. Gerhardt. No --

Ms. Garcia. And it just seemed to me to be one of the most ridiculous assertions of any kind of privilege.

Mr. Gerhardt. That would be an abuse of privilege, in my opinion. So privilege, executive privilege, attorney-client privilege, neither of these protects anyone, including the President or anybody that works for the President, to engage in criminal activity.

You wouldn't have the privilege to maintain the confidentiality of that. In fact, the privilege is maybe not just waived but doesn't apply to conversations that -- or actions that may relate to criminal activity.

Ms. Garcia. But in her case, it was more than just criminal -- potential criminal activity.

Have you read the transcript? I mean, it was even talking about her job.

Mr. Gerhardt. Right.

Ms. Garcia. I mean, do you think that she's at a level of position that is so sensitive that she couldn't just say what she did at the White House?

Mr. Gerhardt. And nobody is in that position, not even the President. Executive privilege may well apply to certain conversations that happened, but they're fairly narrowly defined. It certainly does not apply to everything the President does or the executive branch does. If it did, then that -- then in the executive branch, the President would be immune from any kind of check and balance

that can be imposed by either of the other branches.

Ms. Garcia. And it certainly -- you know, we've also seen many other Trump administration officials either be ordered not to come or they come and they don't really respond to many of our questions. You know, what does that do to this check and balance that you're referring to? I mean --

Mr. Gerhardt. It impedes the authority.

Ms. Garcia. Can you explain so that the average American understands just why really it's important for us to have Mr. Mueller come here next week, for Hope Hicks to come, for Jared Kushner, and all of the subpoenas? I mean, this isn't about harassment; this is about getting to the truth. Because if we don't do that, what might happen?

Mr. Gerhardt. Yes. I think it is immensely important. As a constitutional law professor, my client's the Constitution. I care about the Constitution. I care about it being appropriately read and appropriately applied and understood. And among the things that we would -- should understand about the Constitution is the fact that impeachment is something that happens at the end of a process. It's not required at the beginning of a process.

You need to be able to have a process, of which this committee clearly, legitimately has the authority to conduct, to determine what happened, the gravity of what happened, and whether or not Articles of Impeachment are appropriate or some other mechanism is appropriate for addressing them.

Ms. Garcia. And as you said, impeachment inquiry is not in the Constitution, the words?

Mr. Gerhardt. No. But impeachment, of course, is. But Article I, Section 5, vests this committee with the -- vests this Congress the authority to -- to adopt rules for its internal governance. That's -- it's the rules that govern the process that each committee conducts.

Ms. Garcia. All right. One final question. If you were here next week with us, what question would you ask Mr. Mueller?

Ms. Scanlon. I'm sorry, it's time.

Mr. Gerhardt. Thank you.

Ms. Scanlon. You may finish -- did you have a quick answer?

Ms. Garcia. Do you have a quick answer? She's --

Mr. Gerhardt. Oh, well, I can think of a lot of questions. I do think it's important to clarify and make sure you probably understand the moments in his report when he defers to Congress and is passing the ball to Congress.

Ms. Garcia. All right. Thank you.

Thank you, Madam Chair. I yield back.

Ms. Scanlon. Okay. I recognize the gentlewoman from Florida for 5 minutes.

Ms. Mucarsel-Powell. Thank you, Madam Chair.

I wanted to ask -- start by asking Mr. Gerhardt a question. According to the Mueller report, and among other things, President Trump requested then-Attorney General Jeff Sessions to reverse his

recusal from the special counsel investigation with an eye toward curtailing its scope. Once President Trump learned that he was under investigation for potential obstruction of justice, President Trump then ordered White House Counsel Don McGahn to have Special Counsel Mueller removed altogether.

So President Trump finds out of Jeff Sessions' recusal, he's extremely upset about this, then he asks Don McGahn to remove the special counsel. Would this be considered, in your opinion, impeachable conduct?

Mr. Gerhardt. Well, it certainly raises serious concerns. And I would -- I would suggest that those actions do raise legitimate suspicions about, not just the motivation, but about the effort to obstruct the investigations into obstructing inquiries that Mr. Mueller was authorized to conduct.

Ms. Mucarsel-Powell. And can you elaborate on your opinion on whether obstruction has also occurred after this President took office as we in this committee have requested for several fact witnesses to appear before us but they have been ordered by the President to not appear before us? How would you constitute that?

Mr. Gerhardt. Well, that's an exercise of power that he's attempting. The question is whether or not that's an abuse of power. To be able to direct people, not just who are currently in government, but who used to be in government, from speaking at all to the committee strikes me as a matter of great concern. That could be an abuse of power, because it stymies the committee's ability to gather evidence

and to make determinations based on that evidence.

Ms. Mucarsel-Powell. And do you have a view on the Miers holding that there's no absolute immunity for a Presidential aide? What is your view on that?

Mr. Gerhardt. Now, immunity from what? I just want to clarify.

Ms. Mucarsel-Powell. From testifying.

Mr. Gerhardt. Oh, from testifying. I think that -- this is one of those areas where it has to be kind of carefully circumscribed. So a President obviously has some ability to protect certain things, such as legitimate material protected by executive privilege. But he -- it doesn't extend to preventing people from doing their constitutional duty, I would say, to be able to comply with a subpoena and come before the committee and talk about things that might have crossed the line and might have been illegal or unconstitutional.

Ms. Mucarsel-Powell. Okay. Thank you.

A couple of more questions. If the executive branch has taken this position that a sitting President can't be indicted as a matter of constitutional law, then Congress probably can't change it through a statute.

Mr. Gerhardt. Right.

Ms. Mucarsel-Powell. But we can at least ensure that the statute of limitations for any offense doesn't run out before the President leaves office.

So this is for Ms. Fredrickson. If the President is immune from prosecution while in office, do you agree that it would make sense for

us to pass a law tolling the statute of limitations for any offenses, to ensure that there will ultimately be a mode of accountability?

Ms. Fredrickson. Well, it certainly seems like something Congress should examine. And I think Professor Eastman actually had said that he supports that legislation, so maybe it's a place where you can get strong bipartisan support.

But I would hate to think that our Constitution insulates the President from -- from any kind of accountability while he's President. And so I think it's very important for Congress to consider how to ensure that the President is not above the law.

Ms. Mucarsel-Powell. Thank you.

And, Mr. Gerhardt, are there any other types of legislation that Congress could enact that would help ensure some measure of accountability in situations where the Justice Department is refusing to bring charges against a sitting President?

Mr. Gerhardt. I said quite possibly. For example, I understand there may be legislation under consideration about protecting special prosecutors, special counsels from being easily terminated. That would be one obvious thing to try to do to try and protect the person whose job it is to consider whether or not there's any misconduct undertaken by the President or anybody at his direction that -- that is criminal or possibly impeachable.

Ms. Mucarsel-Powell. Thank you.

I yield back my time.

Ms. Scanlon. Okay. I just want to remind our committee members

that House rules and precedents require us to refrain from making inappropriate personal references to protected parties, including the President, and this includes accusations of dishonesty, criminality, treason, or other unethical or improper motive.

And with that, I would recognize Mr. Jordan for 5 minutes.

Mr. Jordan. Thank you, Madam Chair.

Ms. Fredrickson, what's the name of the organization that you -- you head up?

Ms. Fredrickson. The American Constitution Society.

Mr. Jordan. American Constitution Society.

Before the Mueller report was made public, and actually 2 days before Attorney General Barr did his first letter to tell us anything about the report, which was March 24 of this year, 2 days prior to that, on March 22, 2019, you said this. You said, the question isn't whether members of the Trump campaign conspired with Russia to sway the 2016 elections. We already know they did.

How did you know that before the report even came out?

Ms. Fredrickson. We had seen multiple indictments as well as prosecutions and convictions of people associated with Russia.

Mr. Jordan. But shouldn't normally someone who's heading up the Constitution Society, don't you normally wait until an investigation is over? Isn't -- in this great Nation, people are presumed to be innocent until -- till proven otherwise, and you are already making a finding, stating a finding as the head of the American Constitution Society before we even had the report by the special counsel's office.

Ms. Fredrickson. There was quite a lot of evidence already in the record. And I think the Mueller report then goes further to lay out multiple instances of contacts between Trump administration --

Mr. Jordan. What's interesting -- you just mentioned the Mueller report. What's interesting is that same day that you said the question isn't whether members of the Trump campaign conspired with Russia to sway the elections, we already know they did -- even though we didn't know that because the report wasn't done -- that same day you wrote an op-ed -- you just mentioned the Mueller report, but you wrote an op-ed that same day, March 22, 2019, where you said we don't need to read the Mueller report. And now you're telling us we do.

So before the report came out, before Bill Barr said anything, you said we already know he's guilty and, oh, by the way, don't read the report.

Ms. Fredrickson. Sir, I --

Mr. Jordan. Now you're telling us we should read the report?

Ms. Fredrickson. The point was a rhetorical one, that there is already so much evidence out there that Congress needs to examine.

Mr. Jordan. That's not what -- I've got the headline right there. We don't need to read the Mueller report. You wrote that, right?

Ms. Fredrickson. I didn't write the title actually. If you read the body of the opinion piece, you will see that it says Congress needs to get this report. So --

Mr. Jordan. Here's what you wrote -- just -- second paragraph.



Mr. Mueller's report may never go public, but we don't need to peek at the recommendations anyway.

So did you write that?

Ms. Fredrickson. I did.

Mr. Jordan. Okay. So you did. But now you're telling us we should read the report?

Ms. Fredrickson. I do, yes. There is much more in there.

Mr. Jordan. Let's read the report --

Ms. Fredrickson. We knew a fair amount already, but now we know more. And I think Congress needs to actually see the full report and the evidence underlying it. And --

Mr. Jordan. Let's read the report. Let's read the report.

Ms. Fredrickson. -- understand how Russia interfered in our elections. Which, again, I will state, I think it's troubling that your side of the aisle doesn't seem to want to examine --

Mr. Jordan. I think it's troubling that the head of the American Constitution Society said we already know that he did something before the report was final. Now you're telling us to read the report.

I'm going to read it on page 2. Page 2, the investigation did not establish that members of the Trump campaign conspired or coordinated with the Russian Government in its election interference activity.

So now that you -- first, you said don't read the report. Now you're saying read the report. I'm reading the report, and it directly contradicts what you said as the head of the American Constitution

Society.

And, of course, the Democrats think it's fine and appropriate to have the head of the American Constitution Society come in here and lecture us today and tell us today how we need to move towards impeachment. I mean, I just -- I fail to get it. I fail to get it.

So what do you say about that sentence right there on page 2, that now that you've changed your mind and say we should read the report, where Bob Mueller says -- the special counsel's office says the investigation did not establish that members of the Trump campaign conspired or coordinated with the Russian Government in its election interference activities?

Ms. Fredrickson. Well, I think it's unfortunate that you actually haven't read the opinion piece, which does say that Congress needs to see the full Mueller report. That is what the opinion piece says.

Mr. Jordan. We're talking about what you wrote, what you said, and what Bob Mueller said. You said that --

Ms. Fredrickson. Exactly what the opinion piece says, that Congress needs to get the full Mueller report.

Mr. Jordan. I think -- Mr. Chairman, here's what's interesting. Here's what's interesting. We have a witness today, who before the Mueller report was out, said we already know the President's guilty. Before Bill Barr issued his first statement on the report, says we already know he's guilty. That same day that she said those things, she writes an op-ed piece saying don't read the Mueller report, because

if you do, you'll find out what she claimed is absolutely not true.

Ms. Fredrickson. I would actually --

Mr. Jordan. And she's an expert witness today.

Ms. Fredrickson. -- once again, would recommend that you actually read the piece so that you can see what it says.

Mr. Jordan. I read your piece. I read the whole --

Ms. Fredrickson. Apparently not, because it does say that Congress --

Mr. Jordan. I did just a few minutes ago. Because I remember the exchange we had a few months ago right after -- right after Bill Barr had sent his March 24 letter we had a little discussion about this same type -- I can't believe the Democrats invited you back.

I yield back.

Ms. Fredrickson. As I said, it's really unfortunate you don't actually bother to read beyond the title.

Mr. Jordan. Mr. Chairman, I've got 20 seconds -- I've got 4 seconds. I did read -- and you know what? I did not follow her advice. I read the Mueller report. She's telling people not to.

Ms. Scanlon. Okay. And I know that the Mueller report then goes on to say that his conclusions would change if he were given access to additional evidence.

I now recognize Mr. Swalwell for 5 minutes.

Mr. Swalwell. Thank you, Madam Chair.

Professor Fredrickson, is there a difference between criminal conspiracy, something that could be proved beyond a reasonable doubt,

and conspiracy?

Ms. Fredrickson. Well, there's certainly a distinction in how the public talks about it and our understanding. And one of the things I had, you know, was hoping to engage in with your colleague here from the other side of the aisle, is an understanding that all of our intelligence agencies have indicated that the Russians had made sweeping attacks on our election systems. There were multiple contacts with Trump campaign officials that there were indictments, there were prosecutions. There's an enormous need for Congress to actually probe more deeply into how this happened and how to prevent it from happening again.

Mr. Swalwell. And when you read the 200 pages of Volume I that lay out the multiplicity of contacts between the Trump campaign and the Russians, do you see a failure of imagination by prior Congresses to write laws that would protect us from this type of conduct and to have a criminal remedy? Do you see gaps that occurred, like being approached and not telling the FBI that foreign adversaries are trying to --

Ms. Fredrickson. I know that Members of Congress are proposing such legislation. I think it's important to, again, I think as part of your authorities, to examine what happened, to see if in fact the laws were too weak and that allowed hostile foreign powers to have undue influence on campaign officials and to understand how influence might have been reached.

And so, yes, I think it's a very important part of your duties

to protect the integrity of our elections.

Mr. Swalwell. Thank you, Professor.

And, Professor Gerhardt, recognizing that the Mueller report says criminally the laws that we have now, no proof beyond a reasonable doubt that there was conspiracy in Volume I. However, functionally, as a Congress and constitutionally, because of the conduct that's laid out, is there recourse through impeachment -- just in what you have seen in how the Founders have described impeachment and how prior Congresses have engaged on impeachment, do you see a recourse for impeachment based on the 200 pages of just Volume I conduct?

Mr. Gerhardt. I think it's reasonable -- quite reasonable to consider the propriety of it. I think that it is reasonable to inquire, to investigate, to determine evidence and, again, to be able to hear witnesses and put together a record that is helpful to Congress to understand the gravity of whatever's happened, and as well as just whatever did happen.

One other thing I would just sort of emphasize in this context is something we've repeated a few times today, but it's really important to remember, and that is impeachable offenses don't have to be actual crimes. And so this committee, this House, or another committee or another House another time, may decide that there is something that's really serious, and they may want to call it conspiracy or they might want to call it something else, and they're entitled to do that. And they can take -- they have the authority to conduct proceedings to figure out what's happened.

Mr. Swalwell. And in your reading of the report, would you agree, Professor Gerhardt, that the Mueller team did not look at financial compromise of the President or anyone on his team?

Mr. Gerhardt. That's correct. And, again --

Mr. Swalwell. And I'll just let you -- let me add on to that. And would you agree that an impeachment inquiry would not prohibit the inquiring body from looking at financial compromise?

Mr. Gerhardt. That's correct.

Mr. Swalwell. Great. Thank you.

And I would yield back. Thank you.

Ms. Scanlon. Okay. Thank you.

Okay. This will conclude today's hearing. I want to thank all the witnesses for attending. We really appreciate your insights.

And without objection, all members will have 5 legislative days to submit additional written questions for the witnesses or additional materials for the record.

Without objection, the hearing's adjourned.

[Whereupon, at 11:47 a.m., the committee was adjourned.]

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit P**

**U.S. House of Representatives**  
**Committee on the Judiciary**

Washington, DC 20515-6216

One Hundred Sixteenth Congress

**MEMORANDUM**

**To:** Members of the Committee on the Judiciary  
**From:** Chairman Jerrold Nadler  
**Date:** July 11, 2019  
**Re:** Lessons from the Mueller Report, Part III: "Constitutional Processes for Addressing Presidential Misconduct"

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The Committee on the Judiciary on Friday, July 12, 2019, at 9:00 a.m. in room 2141 of the Rayburn House Office Building will hold a hearing on "Lessons from the Mueller Report, Part III: 'Constitutional Processes for Addressing Presidential Misconduct.'" The Majority witnesses are Caroline Fredrickson, President, American Constitution Society; and Michael Gerhardt, Samuel Ashe Distinguished Professor in Constitutional Law, University of North Carolina School of Law. The Minority witness is Dr. John Eastman, Henry Salvatori Professor of Law and Community Service Director, Center for Constitutional Jurisprudence, Dale E. Fowler School of Law.

**I. Congress' Article I Authorities**

The purpose of this hearing is to examine the range of constitutional remedies for addressing presidential misconduct available to Congress under its Article I powers.

By way of background, the redacted version of the "Report On The Investigation Into Russian Interference In The 2016 Presidential Election" ("Mueller Report" or "the Report") finds that the Russian government attacked the 2016 U.S. presidential election in "sweeping and systematic fashion." The Mueller Report, released on April 18, 2019, also describes multiple instances of possible obstruction of justice by President Donald Trump that were investigated by Special Counsel Robert S. Mueller, III. As the Special Counsel states in the Mueller Report:

[I]f we had confidence after a thorough investigation of the facts that the President clearly did not commit obstruction of justice, we would so state. Based on the facts and the applicable legal standards, however, we are unable to reach that judgment. The evidence we obtained about the President's actions and intent presents difficult issues that prevent us from conclusively determining that no criminal conduct occurred. Accordingly, while this report does not conclude that the President committed a crime, it also does not exonerate him.<sup>1</sup>

The Committee on the Judiciary has a constitutional duty to investigate credible allegations of misconduct by executive branch officials, including the President of the United States. The Mueller

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<sup>1</sup>Mueller Report, Vol. II at 2.



Report explicitly acknowledged Congress's role in investigating and potentially rectifying presidential misconduct. In explaining why the Report did not reach a "traditional prosecution or declination decision" regarding the President's conduct outlined in Volume II, the Special Counsel "recognized that a federal criminal accusation against a sitting President would place burdens on the President's capacity to govern and potentially preempt **constitutional processes for addressing presidential misconduct.**"<sup>2</sup> That passage is the source for tomorrow's hearing title and reflects the Special Counsel's recognition that under our Nation's tripartite system of government each branch acts as a check on the power of the others. As the Mueller Report's frequent references to Congress make clear, Congress has a role in investigating the potential presidential misconduct he uncovered so that it may determine how best to exercise its Article I powers to act as a check on the abuse or misuse of Executive Branch power.

Accordingly, the Committee has sought to obtain the full version of the Mueller Report, in addition to key underlying evidentiary and investigative materials.<sup>3</sup> The Committee has also sought to obtain documents and testimony from former White House Counsel Donald McGahn<sup>4</sup> and others as part of its "investigation into the alleged obstruction of justice, public corruption, and other abuses of power by President Donald Trump, his associates, and members of his Administration and related concerns."<sup>5</sup> The Committee has previously specified that the purpose of this investigation is to independently ascertain the relevant facts in order to determine the appropriate steps to take pursuant to its Article I powers:

The purposes of this investigation include: (1) investigating and exposing any possible malfeasance, abuse of power, corruption, obstruction of justice, or other misconduct on the part of the President or other members of his Administration; (2) considering whether the conduct uncovered may warrant amending or creating new federal authorities, including among other things, relating to election security, campaign finance, misuse of electronic data, and the types of obstructive conduct that the Mueller Report describes; and (3) considering whether any of the conduct described in the Special Counsel's Report warrants the Committee in taking any further steps under Congress' Article I powers. That includes whether to approve articles of impeachment with respect to the President or any other Administration official, as well as the consideration of other steps such as

<sup>2</sup> Mueller Report, Vol. II at 1 (citing U.S. CONST. Art. I § 2, cl. 5; § 3, cl. 6) (emphasis added).

<sup>3</sup> On April 19, 2019, the Committee issued a subpoena to Attorney General Barr seeking an unredacted copy of the Mueller Report and underlying materials. The Attorney General failed to comply with subpoena. The Committee voted to hold him in contempt on May 8, 2019. The specific factual circumstances surrounding the Barr subpoena are described in House Report 116-105, which was filed by the Judiciary Committee on June 6, 2019. On June 10, 2019, the Department of Justice agreed to begin complying with this subpoena by setting up a process by which all Members of the Committee are permitted to review key underlying documents referenced in the Mueller Report and to review a less-redacted version of Volume II of the Mueller Report, excluding grand jury information. The Department's production of underlying documents remains ongoing, and enforcement of the subpoena therefore remains pending. The Committee's effort to obtain these materials is consistent with the views expressed by the House in H. Con. Res. 24, which passed the House unanimously and called for "the full release to Congress of any report, including findings, Special Counsel Mueller provides to the Attorney General."

<sup>4</sup> The Mueller Report revealed that Mr. McGahn was a witness to multiple instances of potential obstruction of justice. As such, on April 22, 2019, Chairman Nadler issued a subpoena for testimony and documents from Mr. McGahn. The subpoena requested that Mr. McGahn produce documents shared with him or his counsel by the White House during the Special Counsel's investigation by May 7, 2019 and appear to testify before the Committee on May 21, 2019. On May 21, 2019 the Judiciary Committee held its scheduled hearing and Mr. McGahn did not appear. More specific details surrounding the McGahn subpoena are set forth in the relevant section of House Report 116-108.

<sup>5</sup> H. Rep. No. 116-105, at 13 (2019).

censure or issuing criminal, civil or administrative referrals. No determination has been made as to such further actions, and the Committee needs to review the unredacted report, the underlying evidence, and associated documents so that it can ascertain the facts and consider its next steps.<sup>6</sup>

H. Res. 430, authorizing the Committee on the Judiciary to initiate or intervene in judicial proceedings to enforce certain subpoenas and for other purposes, as passed by the House on June 11, 2019 affirmed “[t]hat in connection with any judicial proceeding brought under the first or second resolving clauses, the chair of any standing or permanent select committee exercising authority thereunder has any and all necessary authority under Article I of the Constitution.”<sup>7</sup>

As described above, this Committee is currently investigating allegations of presidential misconduct described in the Mueller Report and other potential abuses of power. With regard to the Committee’s responsibility to determine whether to recommend articles of impeachment against the President, articles of impeachment have already been introduced in this Congress and referred to the Judiciary Committee.<sup>8</sup> They are under consideration as part of the Committee’s investigation, although no final determination has been made. In addition, the Committee has the authority to recommend its own articles of impeachment for consideration by the full House of Representatives. The Committee seeks key documentary evidence and intends to conduct hearings with Mr. McGahn and other critical witnesses testifying to determine whether the Committee should recommend articles of impeachment against the President or any other Article I remedies, and if so, in what form. With respect to the grand jury information included in the Mueller Report, because the Committee has not been provided access to any grand jury materials, H. Res. 430 also authorized the Committee to petition the federal court to provide it with access to that information.<sup>9</sup> As such, the hearing discussion may cover the question of how to best safeguard any grand jury materials the Committee receives.

While censure of the President is rare, Congress has previously passed measures expressing disagreement with specific presidential conduct.<sup>10</sup> Examples include an 1834 Senate resolution repudiating President Andrew Jackson for removing his Treasury Secretary because of his refusal to withdraw government deposits from the Bank of the United States, and an 1842 House committee report criticizing President John Tyler’s use of the veto, accusing him of a “gross abuse of constitutional power.”<sup>11</sup> There is also precedent for a more formal version of censure, in which a house of Congress adopts a resolution not only stating its disagreement with presidential conduct, but also announcing that it finds the conduct worthy of an explicit and official reprimand.<sup>12</sup> In 1860, for example, the House

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<sup>6</sup> *Id.*

<sup>7</sup> As explained in House Report 116-108 accompanying H. Res. 430, “this clause confirms that each committee has the full authority of the House of Representatives to enforce its subpoenas” and that “Committees may, in connection with exercising their authority under this resolved clause, choose to specify the precise constitutional powers upon which they are relying, as well as the legitimate legislative purposes and details of their work within the full bounds of their authority under Article I, whether at or in connection with hearings, in Committee reports, memoranda, or through other means.”

<sup>8</sup> H. Res. 13, 116th Cong. (2019).

<sup>9</sup> H. Res. 430, 116th Cong. (2019).

<sup>10</sup> Todd Garvey, *The Constitutionality of Censuring the President*, CRS Legal Side Bar LSB10096, at 2 (Mar. 12, 2018) (referred to as CRS Legal Side Bar LSB10096).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

adopted a resolution stating that President James Buchanan deserved the “reproof of this House” for awarding federal contracts to party loyalists.<sup>13</sup>

With regard to a possible criminal, civil, or administrative referral, the Department of Justice has discretion as to whether to act upon a referral by Congress for prosecution or civil enforcement. Moreover, with regard to presidential misconduct, the Department’s policy prohibiting the prosecution of a sitting president is an obstacle to DOJ holding him or her accountable for misconduct while in office.<sup>14</sup> State authorities may be more willing to consider enforcing state laws against a president to the extent they deem appropriate under applicable law. Nonetheless, the President is not immune from criminal prosecution after leaving office, and the Supreme Court has already held that a sitting President may be sued in his or her personal capacity for conduct that occurred before taking office.<sup>15</sup> Thus, the congressional referral process serves the important purpose of creating a record and preserving and referring evidence for such time as prosecution, civil enforcement, or other administrative response is feasible.

In addition to these Article I authorities, the hearing is also expected to consider a range of legislative responses to allegations of presidential misconduct, including the operation of the special counsel regulations, and the Administration’s efforts to use expansive theories of absolute immunity, executive privilege, and other legal theories to block and limit congressional investigations. These matters raise important constitutional questions.

## **II. Possible Legislative Remedies Related to Presidential Misconduct**

The following is a non-exclusive list of possible legislative responses that fall within the Judiciary Committee’s jurisdiction.

### **A. Transparency With Regard to White House/DOJ Communications Concerning Law Enforcement Investigations**

As described in Volume II of the Mueller Report, President Trump repeatedly attempted to curtail or impede the Special Counsel’s investigation. According to the Report, among other things, President Trump requested then-Attorney General Jeff Sessions to reverse his recusal from the Special Counsel investigation with an eye toward curtailing its scope.<sup>16</sup> Once President Trump learned that he was under investigation for potential obstruction of justice, President Trump ordered White House Counsel Don McGahn to have Special Counsel Mueller removed altogether.<sup>17</sup>

<sup>13</sup> *Id.*

<sup>14</sup> See *A Sitting President’s Amenability to Indictment and Criminal Prosecution*, 24 Op. O.L.C. 222 (2000) (“2000 OLC Memo”).

<sup>15</sup> *Clinton v. Jones*, 520 U.S. 681 (1997).

<sup>16</sup> Mueller Report, Vol II at 5.

<sup>17</sup> *Id.* Vol. II at 4. In an exchange with Senator Kamala Harris (D-CA) at a May 1, 2019 hearing, Attorney General Barr struggled to answer whether “the President or anyone at the White House ever asked or suggested” that he “open an investigation of anyone,” stating “I’m, I’m trying to grapple with the word ‘suggest.’ I mean, there have been discussions of, of matters out there that, uh—they have not asked me to open an investigation, but...” *The Department of Justice’s Investigation of Russian Interference with the 2016 Presidential Election: hearing before the S. Comm. on the Judiciary*, 116<sup>th</sup> Cong. (2019). Additionally, at a February 8, 2019 hearing before this Committee, Acting Attorney General Matthew Whitaker would not explicitly deny that he had any contacts with the President or the White House regarding ongoing Trump-related investigations in the Southern District of New York in response to direct questions posed by numerous

A number of legislative proposals would address this type of interference in law enforcement investigations. H.R. 3380, the “Security from Political Interference in Justice Act,” introduced by Rep. Hakeem Jeffries (D-NY), would serve to deter further White House interference in law enforcement investigations through the imposition of transparency and recordkeeping requirements on the White House and the Justice Department related to certain communications between the two. The legislation would require the White House and the Department of Justice to log certain covered communications between their personnel relating to criminal and civil investigations, and to periodically share those logs with Congress, along with the Department’s Inspector General and Office of Professional Responsibility. Additionally, the head of each of these investigative offices would be required to notify Congress if after reviewing the logs they determine that a covered communication is inappropriate from a law enforcement perspective or raises concerns about improper political interference.

#### **B. Special Counsel Reform Legislation; Tolling of Statutes of Limitation**

Various bills have been introduced that would impose additional safeguards designed to protect the integrity and independence of future special counsel investigations. Although, existing regulations governing the appointment and removal of a special counsel already provide some limitations on his or her removal, the Attorney General may ultimately rescind or modify these protections against unwarranted removal. H.R. 197, the “Special Counsel Independence and Integrity Act,” introduced by Chairman Nadler (D-NY), would codify those protections by statute and would permit a special counsel who believes his or her removal was unlawful to contest that removal in court. Senator Lindsey Graham (R-SC), Chairman of the Senate Committee on the Judiciary, has proposed similar legislation that would also codify other aspects of existing special counsel regulations.<sup>18</sup> Another related bill, H.R. 47, the “TRUMP Special Counsel Act,” introduced by Rep. Sheila Jackson Lee (D-TX), would also impose additional safeguards.

Attorney General Barr’s oversight of the Special Counsel’s investigation and his handling of the Mueller Report’s release have also raised several additional policy concerns. Under current Department of Justice regulations, the Attorney General is not required to release the report of a special counsel to Congress or the public. While Attorney General Barr eventually publicly released a redacted version of the Report, he published a letter purportedly summarizing the Report’s chief conclusions prior to its release. Additionally, immediately before he released the Report to the public and Congress, Attorney General Barr held a press conference at which he publicly characterized the Special Counsel’s findings. Furthermore, Attorney General Barr initially only provided a redacted version of the Report to Congress. While the Committee eventually negotiated greater Member access to a less redacted version of Volume II of the Report, those efforts entailed months of negotiations and the threat of a criminal contempt referral. To date, no Member of Congress has seen the full unredacted Report.

To address these transparency concerns, Rep. Lloyd Doggett (D-TX) introduced H.R. 1356, the “Special Counsel Transparency Act,” which requires a Special Counsel’s report to be given directly to the Chair and Ranking Member of the House and Senate Judiciary Committees, while being made

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Members of the Committee. See, e.g., Aaron Blake, *Matthew Whitaker’s testimony about Trump trying to influence the Cohen inquiry was cagey. Now we might know why*, WASH. POST, Feb. 20, 2019; Mark Mazzetti et al., *Intimidation, Pressure and Humiliation: Inside Trump’s Two-Year War on the Investigations Encircling Him*, N.Y. TIMES, Feb. 19, 2019.

<sup>18</sup> S. 71, the “Special Counsel Independence and Integrity Act,” 116<sup>th</sup> Cong. (2019).



available to the public in a manner consistent with the Freedom of Information Act. H.R. 1357, the “Special Counsel Reporting Act,” also introduced by Rep. Doggett, would additionally require the Special Counsel to update certain Members of Congress during the course of an investigation, among other congressional reporting requirements.

In addition, Attorney General Barr’s decision declining to charge the President has raised important public policy issues. The Department of Justice’s Office of Legal Counsel (OLC) has concluded that a sitting President cannot be indicted or prosecuted.<sup>19</sup> In his May 24, 2019 letter summarizing the principal conclusions of the Special Counsel’s report, Attorney General Barr wrote “that the evidence developed during the Special Counsel’s investigation is not sufficient to establish that the President committed an obstruction-of-justice offense,” and that this “determination was made without regard to, and is not based on, the constitutional considerations that surround the indictment and criminal prosecution of a sitting president.” The decision by Attorney General Barr, a political appointee of the President, to nonetheless make an express declination determination favoring the President raises significant policy issues. Moreover, the Special Counsel raised those very “constitutional considerations” in the Report to explain why he had declined to make a traditional prosecutorial judgment. There, he noted that Department policy forbids the prosecution of a sitting president and that “[f]airness concerns counseled against potentially reaching that judgment when no charges can be brought.”<sup>20</sup>

The circumstances created by this policy also raise significant questions regarding Congress’s ability under Article I to enact legislation to create accountability for presidential misconduct, as a president may be technically criminally liable for conduct in office yet remain effectively above the law. While potential legislation directly negating the policy raises potential constitutional concerns, there is little debate that the President may be prosecuted after leaving office. As such, Chairman Nadler has introduced H.R. 2678, the “No President is Above the Law Act,” which would toll the statute of limitations on any offense committed by a president, whether before or during his or her term of office, to ensure that he or she is ultimately held accountable for any criminal wrongdoing.

### C. Pardon Legislation

As part of the investigation into potential obstruction of justice, the Special Counsel also examined the President’s conduct toward witnesses such as Paul Manafort and Michael Cohen. Volume II of the Mueller Report noted that the “President’s acts directed at witnesses” included “discouragement of cooperation with the government and suggestions of possible pardons,” many of which took place in plain view.<sup>21</sup> Additionally, in June 2018, in the midst of the Special Counsel investigation, President Trump implied that he may pardon himself in relation to the investigation, tweeting “As has been stated by numerous legal scholars, I have the absolute right to PARDON myself, but why would I do that when I have done nothing wrong? In the meantime, the never ending Witch Hunt, led by 13 very Angry and Conflicted Democrats (& others) . . . .”<sup>22</sup>

<sup>19</sup> 2000 OLC Memo; *see also* Memorandum from Robert G. Dixon, Jr., Assistant Attorney General, Office of Legal Counsel, *Re: Amenability of the President, Vice President and other Civil Officers to Federal Criminal Prosecution while in Office* (Sept. 24, 1973).

<sup>20</sup> Mueller Report, Vol. I at 2.

<sup>21</sup> Mueller Report, Vol. II at 5-6.

<sup>22</sup> Caroline Kenny, *Trump: ‘I have the absolute right to pardon myself’*, CNN (Jun. 4, 2018) available at <https://www.cnn.com/2018/06/04/politics/donald-trump-pardon-tweet/index.html>.

Several Members of Congress have introduced legislation either proposing an amendment to the Constitution to limit the scope of executive clemency or to increase transparency regarding presidential pardons. Rep. Steve Cohen (D-TN) has introduced a proposed amendment to the Constitution that would prohibit the President from granting clemency to him or herself, certain specified close family members, or “to any current or former member of the President’s administration, or to anyone who worked on the President’s presidential campaign as a paid employee.”<sup>23</sup> Rep. Al Green (D-TX) has introduced a similar proposed amendment that would only prohibit the President from granting clemency to him or herself.<sup>24</sup> Rep. Adam Schiff (D-CA) has introduced legislation to require the Department of Justice within 30 days after a pardon to produce to the appropriate Congressional committees all investigative materials related to an offense that arises from an investigation involving the President or a President’s relative for whom a pardon is granted.<sup>25</sup> Rep. Raja Krishnamoorthi (D-IL) has introduced legislation to require the Attorney General within three days of a presidential reprieve or pardon to publish in the Federal Register and on the official website of the President the name of the person, the date on which the reprieve or pardon issued, and the full text of the reprieve or pardon.<sup>26</sup>

#### **D. Foreign Contacts**

Volume I of the Mueller Report, which begins by describing the Russian government’s extensive attacks against the integrity of the 2016 presidential election, also describes certain conduct by the Trump Campaign and individuals associated with the Campaign that could constitute evidence of potential coordination between the Trump Campaign and the Russian government. The Mueller Report documents numerous Russian contacts, which “consisted of business connections, offers of assistance to the Campaign, invitations for candidate Trump and Putin to meet in person, invitations for Campaign officials and representatives of the Russian government to meet, and policy positions seeking improved U.S.-Russian relations.”<sup>27</sup>

The Trump Campaign’s conduct during the 2016 presidential election therefore presents significant concerns regarding the influence of foreign governments over candidates for federal office. As such, several Members of Congress have introduced legislation that would require campaigns to report their contacts with foreign governments. Rep. Eric Swalwell (D-CA) has introduced legislation that would impose on political committees, their agents, or the committee of a candidate for federal office an affirmative duty: 1) to report to the Federal Election Commission any offers of prohibited contributions, donations, expenditures, or disbursements may by a foreign national; and 2) to disclose the identity and purpose of any meeting with a foreign government or agent of a foreign power, with

<sup>23</sup> H.J. Res. 8, 116th Cong. (2019).

<sup>24</sup> H.J. Res. 13, 116th Cong. (2019).

<sup>25</sup> H.R. 1627, 116th Cong. (2019).

<sup>26</sup> H.R. 1348, 116th Cong. (2019).

<sup>27</sup> Mueller Report, Vol. 1 at 5. During a recent interview, in response to a question on whether his campaign would accept information damaging to his opponent from foreign governments or report such an offer to the FBI, President Trump said, “I think maybe you do both.” He went on to say, “It’s not an interference, they have information -- I think I’d take it... If I thought there was something wrong, I’d go maybe to the FBI -- if I thought there was something wrong. But when somebody comes up with oppo research, right, they come up with oppo research, ‘oh let’s call the FBI.’ The FBI doesn’t have enough agents to take care of it. When you go and talk, honestly, to congressman, they all do it, they always have, and that’s the way it is. It’s called oppo research.” ABC News’ Oval Office interview with President Trump, Jun. 13, 2019 *available at* <https://abcnews.go.com/Politics/abc-news-oval-office-interview-president-donald-trump/story?id=63688943>.

failure to comply with these reporting resulting in criminal penalties.<sup>28</sup> Rep. Sheila Jackson Lee (R-TX) has introduced a similar bill, H.R. 2353, the “Duty to Refuse and Report Foreign Interference in American Elections Act of 2019.” Senator Mark Warner (D-VA) has also introduced S.1562, the “Foreign Influence Reporting in Elections Act.”

### **E. Subpoena Enforcement**

The Trump Administration’s refusal to comply with many Congressional subpoenas also raises constitutional concerns. In the 115th Congress, the Committee considered H.R. 4010, the “Congressional Subpoena Compliance and Enforcement Act of 2017,” introduced by Rep. Darrell Issa (R-CA).<sup>29</sup> This legislation provided expedited procedures for Congress to enforce a subpoena in court and would impose monetary penalties on the head of an agency that refused to comply with a subpoena. The Judiciary Committee reported H.R. 4010 unanimously, and it passed by voice vote on the House floor. Representative Madeleine Dean (D-PA) plans to reintroduce the legislation in the 116<sup>th</sup> Congress.

## **III. Additional Legal and Constitutional Issues Presented**

### **A. Presidential Immunity from Prosecution**

The Special Counsel specifically cited the OLC opinion about whether a sitting President can be prosecuted as one of the principal grounds for his decision not to reach a traditional prosecutorial judgment regarding President Trump’s conduct outlined in Volume II of the Report. As noted previously, this policy gives rise to significant concerns about whether the President is effectively placed above the law while in office. Because OLC’s opinion is based on constitutional considerations, it also gives rise to significant concerns about Congress’s own Article I abilities to enact legislation ensuring accountability for presidential misconduct.

In 1973, OLC issued a memorandum concluding that a sitting President cannot be indicted or prosecuted while in office.<sup>30</sup> OLC’s 1973 opinion acknowledged that no explicit textual provision of the Constitution precludes the prosecution of the President. OLC also considered but did not ultimately accept the argument that the President’s position as head of the executive branch precludes him or her from being prosecuted by officers who are, as a structural matter, the President’s subordinates. Instead, OLC based its reasoning on the notion that facing criminal charges would “unduly interfere in a direct or formal sense with the conduct of the Presidency.”<sup>31</sup> OLC assessed that having to face a criminal trial and possible prison sentence would essentially incapacitate the President, making it impossible to perform essential constitutional functions. It also noted that “under our constitutional plan as outlined in Article I, sec. 3, only the Congress by the formal process of impeachment, and not a court by any process should be accorded the power to interrupt the Presidency or oust an incumbent.”<sup>32</sup>

<sup>28</sup> H.R. 2424, 116th Cong. (2019).

<sup>29</sup> H.R. 4010, 115th Cong. (2017).

<sup>30</sup> Memorandum from Robert G. Dixon, Jr., Assistant Attorney General, Office of Legal Counsel, *Re: Amenability of the President, Vice President and other Civil Officers to Federal Criminal Prosecution while in Office* (Sept. 24, 1973).

<sup>31</sup> *Id.* at 27.

<sup>32</sup> *Id.* at 28.

In 2000, OLC reaffirmed its analysis and its conclusion.<sup>33</sup> Its lengthy opinion first described the 1973 opinion in detail, followed by a description of a brief filed by then-Solicitor General Robert Bork (also in 1973) arguing that then-Vice President Spiro Agnew was amenable to prosecution while in office. That brief, consistent with the 1973 OLC opinion, argued that only the President was immune from prosecution while in office.<sup>34</sup> Next, OLC assessed whether any intervening case law warranted changing its conclusions, and it determined that three relevant decisions were “largely consistent” with its prior analysis.<sup>35</sup>

OLC examined three Supreme Court decisions: (1) *United States v. Nixon*,<sup>36</sup> in which the Court recognized the existence of executive privilege but held that the privilege was not absolute and affirmed a judgment ordering President Nixon to turn over various tape recordings to Special Prosecutor Jaworski; (2) *Nixon v. Fitzgerald*,<sup>37</sup> in which the Court held that the President is absolutely immune from civil damages suits based upon his official acts while in office; and (3) *Clinton v. Jones*,<sup>38</sup> in which the Court held that the President can be sued for civil damages while in office over claims based on his personal conduct before he became President. OLC described all three cases as having “balance[d] the constitutional interests underlying a claim of presidential immunity against the governmental interests in rejecting that immunity.”<sup>39</sup> In OLC’s view, the same balancing analysis supports a conclusion that a President cannot be indicted or prosecuted while in office because of the unique burdens that such proceedings—and, potentially, an actual sentence of imprisonment—would impose.<sup>40</sup>

OLC acknowledged the “important national interest in ensuring that no person—including the President—is above the law.”<sup>41</sup> It also acknowledged the importance of avoiding the possibility that the statute of limitations could run out by the time the President leaves office.<sup>42</sup> However, it noted that “a President suspected of the most serious criminal wrongdoing might well face impeachment and removal from office before his term expired, permitting criminal prosecution at that point.”<sup>43</sup> Additionally, it noted that the statute of limitations could be tolled by a court—or that Congress “could overcome any such obstacle by imposing its own tolling rule.”<sup>44</sup> As to the argument that impeachment itself might pose the same or similar types of burdens on the President’s exercise of his or her constitutional duties, OLC stated that this risk is “expressly contemplated by the Constitution,” and that “the Framers themselves specifically determined that the public interest in immediately removing a sitting President whose continuation in office poses a threat to the Nation’s welfare outweighs the public interest in avoiding the Executive burdens incident thereto.”<sup>45</sup>

Some scholars have criticized OLC’s analysis and conclusions. Professor Laurence Tribe, for example, has argued that it is untenable that a President could commit a crime in order to win an election, escape accountability while in office, and then benefit from a pardon from a hand-picked Vice

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<sup>33</sup> 2000 OLC Memo.

<sup>34</sup> *See id.* at 232-36.

<sup>35</sup> *Id.* at 238.

<sup>36</sup> 418 U.S. 683 (1974).

<sup>37</sup> 457 U.S. 731 (1982).

<sup>38</sup> 520 U.S. 681 (1997).

<sup>39</sup> 2000 OLC Memo at 244.

<sup>40</sup> *Id.* at 246-58.

<sup>41</sup> *Id.* at 255.

<sup>42</sup> *Id.* at 256.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 258.



President upon the President's resignation or impeachment.<sup>46</sup> Walter Dellinger, who served as the Assistant Attorney General in charge of OLC from 1993 to 1996, has argued that the President could potentially be *indicted* while in office even if not prosecuted.<sup>47</sup> Nonetheless, Special Counsel Mueller stated that his office accepted OLC's conclusions for purposes of their investigation.<sup>48</sup>

OLC opinions are generally considered to be binding upon the executive branch. On rare occasions, OLC has rescinded prior opinions if it later determines their reasoning to be fundamentally unsound. This occurred, for example, with respect to several opinions authored by former Deputy Assistant Attorney General John Yoo regarding the treatment of detainees, the Foreign Intelligence Surveillance Act, and other national security matters.<sup>49</sup> The Attorney General also has the authority to override OLC, and he or she could conceivably rescind prior OLC opinions. The President, as chief executive, could also conceivably instruct the Attorney General to take such actions, although it is unclear whether any President has done so previously.

## **B. White House Officials' Purported "Absolute Immunity" from Compelled Testimony and Excessive use of Executive Privilege**

### **1. Absolute Immunity**

In several recent instances, the Trump administration has asserted that various former White House officials are "absolutely immune" from having to comply with congressional subpoenas for testimony. On this basis, President Trump instructed former White House Counsel Don McGahn not to appear before this Committee in response to its subpoena. He also instructed former White House Communications Director Hope Hicks not to answer any questions in a transcribed interview that related to her service in the White House. Additionally, the Trump administration has indicated that the President may assert "absolute immunity" with respect to White House adviser Kellyanne Conway in response to a subpoena from the Committee on Oversight and Reform.<sup>50</sup>

On May 20, 2019, OLC issued an opinion (the "Engel Memorandum") supporting this position with respect to Mr. McGahn.<sup>51</sup> The Engel Memorandum correctly notes that administrations of both parties have claimed that White House officials are "absolutely immune" from having to provide compelled testimony before Congress. One well-known instance occurred when President George W. Bush took this position with respect to former White House Counsel Harriet Miers, who was subpoenaed by this Committee in the course of its investigation into the firings of several U.S. Attorneys. President Obama also took this position with respect to then-White House adviser David Simas, who was subpoenaed by the Committee on Oversight and Government Reform in the course of an investigation into possible Hatch Act violations.<sup>52</sup> The basis for such a claim was first described in a

<sup>46</sup> Laurence H. Tribe, *Constitution Rules Out Immunity for Sitting Presidents*, BOSTON GLOBE, Dec. 12, 2018.

<sup>47</sup> Walter Dellinger, *Indicting a Sitting President Is Not Foreclosed: The Complex History*, Lawfare Blog, June 18, 2018.

<sup>48</sup> Special Counsel Robert S. Mueller, III, *Report On The Investigation Into Russian Interference In The 2016 Presidential Election*, Vol. II at 3 (March 2019).

<sup>49</sup> See Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, Memorandum *Re: Status of Certain OLC Opinions Issued in the Aftermath of the Terrorist Attacks of September 11, 2001* (Jan. 15, 2009).

<sup>50</sup> See Letter to Elijah E. Cummings, Chair, H. Comm. on Oversight & Reform, from Pat A. Cipollone, Counsel to the President (June 24, 2019) (stating that Ms. Conway would decline a voluntary invitation for testimony. In response, the committee voted to authorize a subpoena.).

<sup>51</sup> Memorandum from Steven A. Engel, Assistant Attorney General, Office of Legal Counsel, *Re: Testimonial Immunity Before Congress of the Former Counsel to the President* (May 20, 2019) ("Engel Memorandum").

<sup>52</sup> See *Immunity of the Assistant to the President and Director of the Office of Political Strategy and Outreach from Congressional Subpoena*, 38 Op. O.L.C. \_\_ (July 15, 2014).

1971 memorandum written by William Rehnquist, who was then serving as the Assistant Attorney General in charge of OLC.<sup>53</sup>

The Engel Memorandum principally argues that requiring senior White House officials to testify before Congress would interfere in various ways with the separation of powers. It asserts that this would create an opportunity for Congress to try to “supervise the President’s actions,” because senior White House aides essentially serve as the President’s “alter egos.”<sup>54</sup> It also claims that having to testify in front of Congress could divert senior White House aides from their primary responsibilities to the President. Additionally, OLC claims that such compelled testimony would create an inherent risk of disclosing privileged material, notwithstanding the witness’s ability to assert privilege on a question-by-question basis.<sup>55</sup>

However, the only court ever to consider these arguments has decisively rejected them. When this Committee sued to compel Ms. Miers’s testimony, the U.S. District Court for the District of Columbia, in an opinion issued by Judge Bates, held that the “absolute immunity” doctrine had no basis in any case law.<sup>56</sup> To the contrary, Judge Bates pointed out that in the most closely analogous case, *Harlow v. Fitzgerald*,<sup>57</sup> the Supreme Court had concluded that senior White House aides are not absolutely immune from civil damages suits.<sup>58</sup> In doing so, the Court had rejected the idea that such advisers serve as “alter egos” to the President—a central underpinning of OLC’s rationale for absolute immunity from compelled testimony. Judge Bates concluded that the rationales for excusing White House aides from congressional testimony are in fact weaker than those for excusing them from civil damages suits, noting that other senior administration officials, such as Cabinet officials in charge of various departments and agencies, testify before Congress on a regular basis.<sup>59</sup>

The Engel Memorandum also states that the administration’s position is “the same answer that the Department of Justice has repeatedly provided for nearly five decades.”<sup>60</sup> However, although the Department has maintained a position that senior White House aides are immune from compelled testimony, the record of the White House permitting senior aides to testify before Congress—whether on a voluntary basis or through some other accommodation reached with the relevant congressional committee—is decidedly more mixed. The Congressional Research Service, for example, has catalogued dozens of instances in recent decades in which senior White House aides have testified before various committees.<sup>61</sup> Thus, although the Department and OLC have maintained their position as a theoretical matter that a White House aide cannot be forced to testify over the President’s objections, as a practical matter such objections have often been reserved or withdrawn in the face of congressional subpoenas or other pressures.

## 2. Executive Privilege

<sup>53</sup> See Engel Memorandum at 2.

<sup>54</sup> *Id.* at 5; see *id.* at 13.

<sup>55</sup> *Id.* at 5-6.

<sup>56</sup> *Comm. on the Judiciary v. Miers*, 558 F. Supp. 2d 53 (D.D.C. 2008).

<sup>57</sup> 457 U.S. 800 (1982).

<sup>58</sup> *Miers*, 558 F. Supp. at 100-01.

<sup>59</sup> *Id.* at 101.

<sup>60</sup> Engel Memorandum at 1.

<sup>61</sup> See Harold C. Relyea & Todd B. Tatelman, *Presidential Advisers’ Testimony Before Congressional Committees: An Oversight*, Congressional Research Service, Apr. 10, 2007.

In addition to asserting dubious claims of “absolute immunity” as to certain witnesses, the White House has instructed several witnesses—including Mr. McGahn, Ms. Hicks, and former White House attorney Annie Donaldson—not to comply with the Committee’s duly issued subpoenas for documents or (in Ms. Donaldson’s case) written answers to questions on the basis that the documents and answers would “implicate constitutionally-based Executive Branch confidentiality interests.”<sup>62</sup> The White House’s legal assertions are untenable for several reasons. To begin, in the face of a congressional subpoena, the President must actually assert a claim of executive privilege with respect to any portion of a witness’s testimony or specific documents. The bare assertion that a witness’s response to a question a document might *implicate* “confidentiality interests” does not absolve the subpoenaed party of his or her duty to comply. To the contrary, the law is clear that a witness is “not excused from compliance with the Committee’s subpoena by virtue of a claim of executive privilege that may ultimately be made.”<sup>63</sup> Nor can a “blanket assertion of privilege” over a broad set of records suffice, without a “showing . . . that any of the individual records satisf[ies] the prerequisites for the application of the privilege.”<sup>64</sup>

Moreover, the White House has no valid basis to assert executive privilege with respect to matters specifically described in the Mueller Report. The White House long ago made the strategic decision to not invoke executive privilege with respect to numerous witnesses’ interviews with the Special Counsel’s office, and then to the publication of the Report. The Mueller Report in fact includes numerous passages describing statements made by the witnesses in their interviews and citing to specific reports of those interviews. Often, the Report contains verbatim quotations of statements that witnesses made to the Special Counsel’s office. The Report also describes and quotes from certain documents voluntarily provided to the Special Counsel’s office, such as handwritten notes taken by Ms. Donaldson and others. The D.C. Circuit has expressly held that the White House “waive[s] its claims of privilege in regard to [] specific documents that it voluntarily reveal[s] to third parties outside the White House.”<sup>65</sup> The court has also made clear that the release of a particular document “waives [] privileges for the document or information specifically released.”<sup>66</sup> In that case, the White House had voluntarily disclosed a document to the private attorney for a former cabinet official.<sup>67</sup> Here, the White House has voluntarily authorized the release of the redacted Mueller Report to the public at large and has also shared numerous documents with private counsel for various witnesses. As a result, any executive privilege claims related to matters described in the Mueller Report or in documents shared with third parties has clearly been waived. Nevertheless, the White House has improperly prevented several witnesses from answering questions regarding that same information.

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<sup>62</sup> See Letter to Jerrold Nadler, Chairman, H. Comm. on the Judiciary, from Sandra L. Moser, Quinn Emanuel, Jul. 5, 2019 (enclosing Annie Donaldson’s written answers to Committee’s interrogatories, and stating that the White House has objected on a question-by-question basis); See also Letter to Jerrold Nadler, Chairman, H. Comm. on the Judiciary, from Pat Cipollone, Counsel to the President, May 7, 2019 (directing Don McGahn not to comply with subpoena for documents on the grounds that “[t]he White House records remain legally protected from disclosure under longstanding constitutional principles, because they implicate significant Executive Branch confidentiality interests and executive privilege”).

<sup>63</sup> *Comm. on the Judiciary, U.S. House of Reps. v. Miers*, 558 F. Supp. 2d 53, 106 (D.D.C. 2008).

<sup>64</sup> *Comm. on Oversight & Gov’t Reform, U.S. House of Reps. v. Lynch*, 156 F. Supp. 3d 101, 104 (D.D.C. 2016).

<sup>65</sup> *In re Sealed Case*, 121 F.3d 729, 741-42 (D.C. Cir. 1997).

<sup>66</sup> *Id.* at 741.

<sup>67</sup> See *id.* at 740.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit Q**

**THE WHITE HOUSE**

WASHINGTON

January 27, 2017

MEMORANDUM TO ALL WHITE HOUSE STAFF

FROM: Donald F. McGahn II – Counsel to the President

SUBJECT: Communications Restrictions with Personnel at the Department of Justice

This Memorandum outlines important rules and procedures regarding communications between the White House (including all components of the Executive Office of the President) and the Department of Justice. These rules exist to ensure both efficient execution of the Administration's policies and the highest level of integrity with respect to civil or criminal enforcement proceedings handled by DOJ. *In order to ensure that DOJ exercises its investigatory and prosecutorial functions free from the fact or appearance of improper political influence, these rules must be strictly followed.*

A. Limitations on discussing ongoing or contemplated cases or investigations

DOJ currently advises the White House about contemplated or pending investigations or enforcement actions under specific guidelines issued by the Attorney General. As a general matter, only the President, Vice President, Counsel to the President, and designees of the Counsel to the President may be involved in such communications. These individuals may designate subordinates to engage in ongoing contacts about a particular matter with counterparts at DOJ similarly designated by DOJ. Any ongoing contacts pursuant to such a designation should be handled in conjunction with a representative of the Counsel's office.

The White House often coordinates more broadly with DOJ (including its Office of Legal Counsel, Office of the Solicitor General, and Civil Division) where the government is or may be a defendant in litigation. These communications must first be cleared by the Counsel's Office.

If DOJ requests the views of the White House on any litigation, you must consult with the Counsel's Office before responding, and any response must be made in consultation with the Counsel's Office. This ensures that the White House provides a coherent response that takes account of both the Counsel's Office legal views and the President's broader policy objectives.

Communications with DOJ about individual cases or investigations should be routed through the Attorney General, Deputy Attorney General, Associate Attorney General, or Solicitor General, unless the Counsel's Office approves different procedures for the specific case at issue. In their discretion, and as appropriate for the handling of individual cases, those DOJ officials may authorize additional DOJ attorneys to discuss individual cases or investigations with members of the Counsel's Office. The President, Vice President, Counsel to the President, and Deputy Counsel to the President are the only White House individuals who may initiate a conversation with DOJ about a specific case or investigation.

These rules recognize the President's constitutional obligation to take care that the laws of the United States are faithfully executed, while ensuring maximum public confidence that those laws are administered and applied impartially in individual investigations or cases.

B. Limitations on discussing other matters

The White House may communicate with DOJ about matters of policy, legislation, budgeting, political appointments, public affairs, intergovernmental relations, administrative matters, or other matters that do not relate to a particular contemplated or pending investigation or case. You must route these communications through the offices of the Attorney General, Deputy Attorney General, or Associate Attorney General unless you have received clearance from the Counsel's office to follow different procedures.

C. Restrictions on soliciting an OLC opinion

The White House often relies upon the Office of Legal Counsel to issue formal legal opinions. Requests for such opinions must be limited to specific legal questions impacting particular matters before the Executive Branch. Such requests must be authorized by the President, the Vice President, the Counsel to the President, or a Deputy Counsel to the President. These individuals may also designate others who may engage in ongoing contacts with OLC where a request for a formal legal opinion has been authorized. If this designation extends to individuals outside the Counsel's Office, it should be in writing, and the ongoing contacts should be handled in conjunction with a member of the Counsel's office. All requests for an OLC opinion shall be directed to the Attorney General, the Assistant Attorney General for OLC, or one of their designees.

D. National Security Exceptions

Frequent communications between the White House and DOJ will be necessary on matters of national security and intelligence, including counter-terrorism and counter-espionage issues. Accordingly, communications that relate to urgent and ongoing national-security matters may be handled by specifically designated individuals. This exception does not relate to a particular contemplated or pending investigation or case absent written authorization from the Counsel to the President. In emergencies for which application of these procedures would pose a serious threat to national security, White House personnel may receive from DOJ communications necessary to protect against such threats. The Counsel to the President shall be informed about any such contacts as promptly as is practicable.

E. Consultation

If you have any questions or do not believe that a potential contact with DOJ fits neatly into any of these categories, you must consult the Counsel's office for guidance. Moreover, unless you are certain that the particular contact is permissible, you must consult with the Counsel's Office before proceeding.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
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2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

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DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit R**

**U.S. House of Representatives**  
**Committee on the Judiciary**

**Washington, DC 20515-6216**

**One Hundred Sixteenth Congress**

March 4, 2019

Donald McGahn, Esq.  
c/o William A. Burck, Esq.  
Quinn Emanuel Urquhart & Sullivan  
1300 I Street NW  
Suite 900  
Washington, D.C. 20005

Dear Mr. McGahn,

The House Judiciary Committee is investigating a number of actions that threaten our nation's longstanding commitment to the rule of law, including allegations of obstruction of justice, public corruption, and other abuses of power. As part of that work, I write to request that you provide the documents set forth in the attached Document Requests no later than March 18, 2019.

This is a critical time for our nation. President Trump and his administration face wide-ranging allegations of misconduct that strike at the heart of our constitutional order. Congress has a constitutional duty to serve as a check and balance against any such excesses. We have an obligation to investigate evidence of abuses of executive power, public corruption, and acts of obstruction designed to undermine both our laws and the credibility of the agencies that enforce those laws. We are also responsible for passing laws to address, and prevent the recurrence, of any such misconduct.

Under the Rules of the House of Representatives, the Committee's jurisdiction includes the judiciary and judicial proceedings, civil liberties, criminal law enforcement, and questions of constitutional law. The Committee is the main oversight authority for the Department of Justice, including its component agencies, its personnel, and its law enforcement activities. The Committee has also played a historic role as the primary forum for hearings on the abuse of executive power.

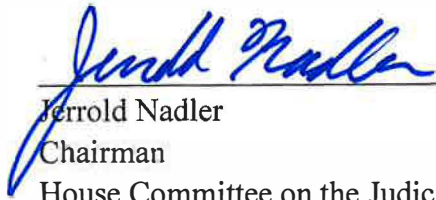


Given this charge, over the course of our investigation, the Committee is determined to ask critical questions, gather all of the relevant information, judiciously assess the evidence, and present our findings to the American people, whatever those findings may be.

To that end, I respectfully ask that you produce the documents set forth in the Document Requests. As you will see, I have limited the initial production to materials that have already been produced in other proceedings to reduce the burden on you and so that they may be provided to us by March 18. My staff will work with you on a mutually agreeable schedule for the production of the remainder of the documents in Schedule A.

Thank you for your prompt attention to these requests.

Sincerely,



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Jerrold Nadler  
Chairman  
House Committee on the Judiciary

cc: Honorable Doug Collins, Ranking Member, House Committee on the Judiciary

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
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51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit S**

**quinn emanuel trial lawyers | washington, dc**

1300 I Street NW, Suite 900, Washington, District of Columbia 20005-3314 | TEL (202) 538-8000 FAX (202) 538-8100

WRITER'S DIRECT DIAL NO.  
(202) 538-8120

WRITER'S EMAIL ADDRESS  
williamburck@quinnemanuel.com

March 18, 2019

**VIA E-MAIL**

The Honorable Jerrold Nadler  
Chairman  
United States House of Representatives  
Committee on the Judiciary  
Washington, DC 20515-6216  
[HJUD.Correspondence@mail.house.gov](mailto:HJUD.Correspondence@mail.house.gov)

Re: March 4, 2019 Document Requests

Dear Chairman Nadler,

This responds to your letter of March 4, 2019, requesting the production of documents from Donald F. McGahn. As relevant to Mr. McGahn, the requested documents concern the period during which he was outside counsel to the Trump Campaign and Transition and served as Counsel to the President in the White House. The Campaign and the White House are the appropriate authorities to decide the scope of access to these documents, including whether a claim of executive, attorney-client and/or attorney work product privilege would protect such information from disclosure. Accordingly, we have forwarded your requests to the Campaign and the White House for their consideration.

Sincerely,



William A. Burck

**quinn emanuel urquhart & sullivan, llp**

LOS ANGELES | NEW YORK | SAN FRANCISCO | SILICON VALLEY | CHICAGO | WASHINGTON, DC | HOUSTON | SEATTLE | BOSTON | SALT LAKE CITY  
LONDON | TOKYO | MANNHEIM | HAMBURG | PARIS | MUNICH | SYDNEY | HONG KONG | BRUSSELS | ZURICH | SHANGHAI | PERTH | STUTTGART

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
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2138 Rayburn House Office Building  
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*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit T**

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1 ALDERSON COURT REPORTING

2 SHAYLAH LYNN BURRILL

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4 MARKUP OF RESOLUTION AUTHORIZING ISSUANCE OF SUBPOENAS.

5 Wednesday, April 3, 2019

6 House of Representatives

7 Committee on the Judiciary

8 Washington, D.C.

9 The committee met, pursuant to call, at 9:01 a.m., in  
10 Room 2141, Rayburn Office Building, Honorable Jerrold Nadler  
11 [chairman of the committee] presiding.

12 Present: Representatives Nadler, Lofgren, Jackson Lee,  
13 Cohen, Johnson of Georgia, Deutch, Bass, Richmond, Jeffries,  
14 Cicilline, Swalwell, Lieu, Raskin, Jayapal, Demings, Correa,  
15 Scanlon, Garcia, Neguse, McBath, Stanton, Dean, Murcarsel-  
16 Powell, Escobar, Collins, Sensenbrenner, Chabot, Gohmert,  
17 Jordan, Buck, Ratcliffe, Roby, Gaetz, Johnson of Louisiana,  
18 Biggs, McClintock, Lesko, Reschenthaler, Cline, Armstrong,  
19 and Steube.

20 Staff present: Aaron Hiller, Deputy Chief Counsel; Arya

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21 Hariharan, Oversight Counsel; David Greengrass, Senior  
22 Counsel; John Doty, Senior Advisor; Lisette Morton, Director  
23 of Policy, Planning, and Member Services; Madeline Strasser,  
24 Chief Clerk; Moh Sharma, Member Services and Outreach  
25 Advisor; Susan Jensen, Parliamentarian/Senior Counsel; Sophie  
26 Brill, Counsel, Constitution Subcommittee; Will Emmons,  
27 Professional Staff Member, Constitution Subcommittee; Brendan  
28 Belair, Minority Chief of Staff; Robert Parmiter, Minority  
29 Deputy Chief of Staff; Jon Ferro, Minority Parliamentarian;  
30 Andrea Woodard, Minority Professional Staff Member; Carlton  
31 Davis, Minority Oversight Counsel; Jake Greenberg, Minority  
32 Professional Staff Member; Ashley Callen, Minority  
33 Professional Staff Member; and Danny Johnson, Minority  
34 Professional Staff Member.

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36 Chairman Nadler. The Judiciary Committee will please  
37 come to order, a quorum being present. Without objection,  
38 the chair is authorized to declare a recess at any time.

39 Pursuant to Committee Rule 2 and House Rule XI, Clause  
40 2, the chair may postpone further proceedings today on the  
41 question of approving any measure or matter or adopting an  
42 amendment for which a recorded vote for the yeas and nays are  
43 ordered.

44 Pursuant to notice, I now call up the chair's resolution  
45 authorizing the issuance of certain subpoenas for documents  
46 and testimony for purposes of markup and move that the  
47 committee agree to the resolution.

48 The clerk will report the resolution.

49 Ms. Strasser. Resolution offered by Chairman Jerrold  
50 Nadler, "Resolved, that upon the adoption of this resolution,  
51 the chairman of the Committee on the Judiciary is authorized  
52 to issue subpoenas" --

53 Chairman Nadler. Without objection, the resolution is  
54 considered as read and open for amendment at any point.

55 [The resolution follows:]

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57 Chairman Nadler. I will begin by recognizing myself for  
58 an opening statement.

59 In late 1973, the Nixon Administration had an idea.  
60 When special counsel, Archibald Cox, asked the White House to  
61 turn over recordings of conversations held in the Oval  
62 Office, President Nixon offered instead to provide the tapes  
63 to Senator John Stennis of Mississippi. Nixon proposed that  
64 Stennis, who was famously hard of hearing, would listen to  
65 the recordings himself, then provide summaries of the tapes  
66 to the special prosecutor. The Nixon Administration  
67 justified the proposal as a means to protect sensitive  
68 information that would not ordinarily be made part of the  
69 record. In hindsight, of course, we know that President  
70 Nixon had ulterior motives. In any event, Cox had a job to  
71 do. That job required him to evaluate the full record for  
72 himself, and he refused the President's offer. President  
73 Nixon ordered him fired the next day.

74 The dynamics of the Stennis compromise, as it became  
75 known, should sound familiar to us. The Trump Administration  
76 has an idea. They want to redact the Mueller report before  
77 they provide it to Congress. The Department of Justice says  
78 the proposal is a means to protect sensitive information that  
79 would not ordinarily be made part of the record, but we have  
80 reason to suspect this Administration's motives. The Mueller  
81 report probably isn't the "total exoneration" the President



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82 claims it to be. And in any event, the committee has a job  
83 to do. The Constitution charges Congress with holding the  
84 President accountable for alleged official misconduct. That  
85 job requires us to evaluate the evidence for ourselves, not  
86 the Attorney General's summary, not a substantially redacted  
87 synopsis, but the full report and the underlying evidence.

88 The Attorney General proposes to redact four categories  
89 of information from the Mueller report: grand jury  
90 information, classified information, information related to  
91 ongoing prosecutions, and "information that may unduly  
92 infringe on the personal privacy and reputational interests  
93 of peripheral third parties." The Department is wrong to try  
94 to withhold that information from this committee. Congress  
95 is entitled to all of the evidence.

96 This isn't just my opinion. It is also a matter of law.  
97 For precedent on 3 of the 4 categories, we need look no  
98 further than the summer of 2016 when pursuant to  
99 congressional subpoena, the Department and the FBI began to  
100 transfer more than 880,000 documents related to the Clinton  
101 investigation to the House of Representatives. That  
102 production included classified information which we held in  
103 our secure facility and which we handled every day. It  
104 included information related to ongoing investigations, and  
105 it included information related to numerous third parties,  
106 many of whom this committee later interviewed as part of the

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107 Republican investigation into the investigation.

108       The other category of information the Attorney General  
109 proposes to redact is grand jury information, normally  
110 protected under Rule 6(e) of the Federal Rules of Criminal  
111 Procedure. Many who seem eager to keep this information from  
112 Congress argue that the law does not allow grand jury  
113 information to be shared outside the Justice Department.  
114 That analysis is incomplete if not outright incorrect. It is  
115 true that Rule 6(e) ordinarily prohibits the Department from  
116 sharing grand jury information with the public. It is also  
117 true that with proper authorization and under court order the  
118 Department must share grand jury information with this  
119 committee.

120       That was the case in 1974 when Judge Sirica authorized  
121 the release of the Watergate road map to this committee at  
122 the request of special counsel, Leon Jaworski. It was the  
123 case in 1998 when a Federal court permitted Ken Starr to  
124 release grand jury information along with his report to  
125 Congress. It was the case in 2008 and 2009 when this  
126 committee went directly to the grand jury twice to get  
127 information relevant to our investigation of Judge Thomas  
128 Porteous.

129       On multiple occasions, I have asked Attorney General  
130 Barr to work with us, to go to the Court and obtain access to  
131 materials the Department deems covered by Rule 6(e). He has

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132 so far refused. I will give him time to change his mind, but  
133 if we cannot reach an accommodation, then we will have no  
134 choice but to issue subpoenas for these materials. And if  
135 the Department still refuses, then it should be up to a  
136 judge, not the President and not his political appointee, to  
137 decide whether or not it is appropriate or the committee to  
138 review the complete record.

139 The resolution before us today authorizes subpoenas for  
140 two categories of information. First, the resolution  
141 authorizes subpoenas for documents and testimony related to  
142 the full and unredacted report of Special Counsel Mueller. I  
143 believe the committee must have access to this information in  
144 order to perform its constitutionally-mandated  
145 responsibility. The House of Representatives agreed with  
146 this proposition when last month it voted 420-0 in support of  
147 a resolution that demanded the release of the full report.

148 Second, the resolution authorizes subpoenas for  
149 documents and testimony of former White House employees.  
150 Each of these individuals has had more than a month to  
151 produce documents to this committee voluntarily. We believe  
152 that these individuals may have received documents from the  
153 White House in preparation for their interviews with the  
154 special counsel. We also believe that these individuals may  
155 have turned this information over to their private attorneys.  
156 Under applicable Federal law, President Trump waived his

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157 claims to executive privilege once this information was  
158 transmitted to outside counsel. Because we may have to go to  
159 court to obtain the complete text of the special counsel's  
160 report, and because the President may attempt to invoke  
161 executive privilege to withhold that evidence from us, it is  
162 imperative that the committee take possession of these  
163 documents and others without delay.

164 Yesterday the President presented me with the high honor  
165 of not one, but three separate mentions on Twitter. He also  
166 talked about our relationship, which goes back several years,  
167 in a press conference yesterday afternoon. President Trump  
168 seems to think in 1998 I was opposed to public release of the  
169 Starr report and that he has caught me changing my mind on  
170 the subject. Let me set the record straight. In 1998, the  
171 debate was not about Congress receiving evidence. Congress  
172 had already received the full 445-page report and 17 boxes of  
173 additional documents, including grand jury material. We are  
174 owed that same opportunity today.

175 In 1998, the central debate was about the public release  
176 of some of the materials accompanying the Starr report,  
177 materials that Congress already had and that described  
178 private sexual acts in lurid detail. Congress has no  
179 business broadcasting accounts of the President's sex life.  
180 It was inappropriate in 1998. It would be inappropriate  
181 today. Our focus should be on the law. That is where our

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182 focus will remain so long as I am chairman.

183 We are dealing now not with the President's private  
184 affairs, but with a sustained attack on the integrity of the  
185 republic by the President and his closest advisers. This  
186 committee requires the full report and the underlying  
187 materials because it is our job, not the Attorney General's,  
188 to determine whether or not President Trump has abused his  
189 office. And we require the report because one day, one way  
190 or another, the country will move on from President Trump.  
191 We must make it harder for future presidents to behave this  
192 way. We need a full accounting of the President's actions to  
193 do that work. Accordingly, I urge my colleagues to support  
194 the resolution.

195 I now recognize the ranking member of the Judiciary  
196 Committee, the gentleman from Georgia, Mr. Collins, for his  
197 opening statement.

198 Mr. Collins. Thank you, Mr. Chairman. Before we begin  
199 today, I want to point out something that I never thought  
200 would actually happen. Jeh Johnson and I actually agree  
201 about something. The former Secretary and I actually agree  
202 that there is a crisis on our southern border. And by doing  
203 so, we actually agree that we need to do something about it.  
204 Unfortunately, as we saw in the first quarter of this month,  
205 and we are starting the second quarter of this committee off  
206 in the same vein, and that is desperately searching for

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207 something on the President. When we understand this, then we  
208 begin to look because instead of today, instead of dealing  
209 with issues that this committee is authorized and should be  
210 dealing with, we are moving on to subpoenas, and that for  
211 several reasons I cannot support.

212 The first, the subpoena for the Mueller report and its  
213 underlying evidence commands the Attorney General to do  
214 really what the unthinkable is. Remember, this is something  
215 to remind folks. The Starr report and the Mueller  
216 investigation were not under the same authorization. We keep  
217 conflating that around here. They were not, and this is why  
218 we need to understand that. Basically what we are now saying  
219 is we are going to ask the Attorney General to break his  
220 regulation, to break the law.

221 The Attorney General's entire mandate is to enforce the  
222 law, and he is expressly forbidden from providing grand jury  
223 outside the Department in very limited and narrow exceptions.  
224 Congress is not one of the exceptions, and the chairman knows  
225 it, and I would disagree with his characterization. I  
226 respect my chairman, but I disagree with his characterization  
227 of the Starr report because they are under different  
228 regulations. They were put out and sent out, but when it  
229 came to grand material, it was material that by law must be  
230 secret. It is grand jury material. It represents statements  
231 which may or may not be true by various witnesses -- I wish

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232 many would understand that -- salacious material, all kinds  
233 of material that would be unfair to release.

234 Those are not Doug Collins' words. Those are my  
235 chairman's words. This is a time in which this is not a new  
236 idea. Right now the only thing is, is there is a hope  
237 against hope that we are going to find something. It was  
238 just actually said. We need to start now so we can begin to  
239 down to the courtroom because we know we are not going to  
240 find anything. And even if we did, and I love the comment  
241 just a moment ago, that there may be -- and I love how we do  
242 this -- may be things in there that is not up to the Attorney  
243 General to decide right or wrong. It was not. It was  
244 Mueller's investigation that the Attorney General passed on.  
245 Here is what we found.

246 This is the problem we are seeing right now. But you  
247 know something? A different political landscape compels the  
248 chairman to adopt new standards of fairness, ignoring  
249 existing law and demanding material he once considered unfair  
250 to release to be released. As much as the chairman and I may  
251 want to view this material as the fundamental underpinning of  
252 our justice system, we cannot. In the face of laws and rules  
253 he finds inconvenient, the chairman demands our Nation's top  
254 law enforcement officer to break the rules and the  
255 regulations and the law. This is reckless, it is  
256 irresponsible, and it is disingenuous.

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257           It is also confusing since the Attorney General is doing  
258 exactly what he said he would be doing, making as much of the  
259 report public as possible under Federal law and departmental  
260 policy, under regulations -- understand this for the media  
261 here -- under regulations written by Janet Reno and other  
262 Democrats don't require to do this, but in the name of  
263 transparency he is. He may even furnish the report as early  
264 as next week, yet the chairman plows ahead.

265           What is the rush? Spring break probably. We don't want  
266 to wait until May. We don't want to wait until the report  
267 comes out. The Attorney General has never said he is not  
268 going to provide exactly the regulations say he is to  
269 provide. Why are we doing this again? Because I guess we  
270 are going to out of town and we don't want anybody to forget  
271 we are doing something. We need a press release. We need to  
272 name people.

273           The interesting thing here is, second, the subpoenas in  
274 this wonderfully vague deal that we are voting on today aimed  
275 at five individuals are completely misguided. Quite simply,  
276 they are to the wrong people. Understand what I am getting  
277 ready to tell you. Two of the individuals are cooperating  
278 with an ill-advised investigation -- remember the 81 letters  
279 -- have provided over 3,000 pages of documents. The chairman  
280 is rewarding their cooperation by announcing their subpoenas  
281 before even notifying their lawyers.



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282           The other three individuals responded to Chairman  
283   Nadler's initial inquiry and have indicated willingness to  
284   cooperate. Democrats never followed up with their lawyers  
285   either. In fact, my investigators have had more contact with  
286   some of the individuals on the 81 initial letters than the  
287   majority has. These three individuals could not have any  
288   documents responsive to the original request because those  
289   responsive documents all came during their time at the White  
290   House, making them presidential records. None of these three  
291   have custody of responsive documents. The chairman knows  
292   this as well because they have received letters on this.

293           Why would we ignore such obvious facts? Because  
294   Judiciary Democrats conduct oversight via press release.  
295   Their investigation into 81 Trump associates has yielded not  
296   the dividends they were looking for. After 1 month, the only  
297   revelation is something we knew already. They have  
298   embarrassed themselves by prejudging conclusions that the  
299   President obstructed justice. Now we have acknowledged the  
300   next stop in the grinding political axes in the government.

301           What is amazing here is the fact nearly 30 others who  
302   have received the Chairman's letter have not responded at all  
303   and despite everything going on. So the message is clear.  
304   Here is what is happening. If you cooperate with this  
305   committee, you will get a subpoena. If you ignore it,  
306   Democrats will return the favor. This seems like a

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307 counterintuitive way to conduct oversight, but it does sound  
308 familiar. Remember the acting attorney general, Mr.  
309 Whitaker, who agreed to come, who agreed to sit here, and was  
310 yet rewarded with a subpoena. And, oh, by the way, before he  
311 ever got here, we caved. We just did away with the subpoena.

312 I am not sure the purpose of the subpoena with this  
313 majority. It seems to be we want to use it because it sounds  
314 good, but yet when it comes down we don't want to use it, and  
315 now we are back at it again because this is all preemptive.  
316 Five of the people who have been actually listed in the list  
317 of subpoenas today have been cooperating or have given advice  
318 to this committee, but have never really been followed up.  
319 And what they have said is we are helping, but you are now  
320 giving us a subpoena.

321 And as far as the Attorney General has gone, he said I  
322 am giving you the Mueller report. I am giving it to you as I  
323 should under regulations, but undoubtedly that is not enough.  
324 Undoubtedly that doesn't make enough press releases. So I  
325 guess what we do is put people's names on a press release.  
326 We tell them that we are going to subpoena them now, although  
327 they have actually already cooperated. You know, it reminds  
328 me of what I am having here, and I have made this comment  
329 many times.

330 I respect my chairman, but we just disagree on this, and  
331 that is the way that it will be, and that is the way we are

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332 going to have it. But it reminds me of the old guys back in  
333 my hometown when they wanted to go fishing and nothing was  
334 biting. They would take a big fishing trip and go out.  
335 Nothing was biting, and one day this old guy just got tired  
336 of it. Instead of catching anything the way he should, he  
337 just reaches in his back pocket and pulls out a piece of  
338 dynamite and throws it in the pond. I can't find anything,  
339 so I am just going to blow up everything and maybe something  
340 will come to the top.

341 This committee is better than this. This committee can  
342 do this better. Why are we here today doing preemptive  
343 subpoenas? Because we are going to be out for a while. We  
344 are not going to be here for a while, and we need to keep the  
345 story rolling. The story rolling is there is some innuendo.  
346 There are some possibilities that may be in this report, but  
347 we can't wait to see it. Unfortunately what will happen, my  
348 friends is this: Christmas will come again. They opened the  
349 present that they bought early. Nothing was there. Now they  
350 are dying to open another present.

351 At the end of the day, this President and what the  
352 report of the Mueller investigation said was no collusion.  
353 No obstruction. And when we understand that, when we move  
354 forward with that, if we can't get what we want, we will try  
355 and try again. Maybe that is the new thing of this  
356 committee, the little train that kept looking for something

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357 that says I will try and I will try and I will try.

358 But at the end of the day, the President is still  
359 president. The economy is still moving forward. The  
360 regulations that we put in place are there. And at this  
361 point in time, the Attorney General, although he is being  
362 smeared repeatedly, is doing exactly what the regulation  
363 says. And for that, congratulations, Mr. Attorney General,  
364 you get a subpoena. With that, I yield back.

365 Chairman Nadler. Thank you, Mr. Collins. Without  
366 objection, all other opening statements will be included in  
367 the record.

368 I now recognize myself for purposes of offering an  
369 amendment in the nature of a substitute. The clerk will  
370 report the amendment.

371 Ms. Strasser. Amendment in the nature of a substitute  
372 to a resolution offered by Mr. Nadler. Strike all after the  
373 resolving clause and insert the following.

374 Chairman Nadler. Without objection, the amendment in  
375 the nature of a substitute will be considered as read and  
376 shall be considered as --

377 Mr. Buck. Mr. Chairman, I object.

378 Chairman Nadler. -- as base text --

379 Mr. Buck. Mr. Chairman, I object. I would like to --

380 Chairman Nadler. -- as base text for purposes of  
381 amendment. I will --

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382           Mr. Collins. Mr. Chairman, there is an objection to

383 the --

384           Chairman Nadler. I will finish the sentence, and then I

385 will recognize the objection.

386           Mr. Collins. Thanks. Well, go right ahead.

387           [Laughter.]

388           Chairman Nadler. Without objection, the amendment in

389 the nature of a substitute will be considered as read and

390 shall be considered as base text for purposes of amendment.

391           [The amendment of Chairman Nadler follows:]

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393 Chairman Nadler. Will the gentleman explain his  
394 objection?

395 Mr. Buck. Yeah, I want it read. I object.

396 Chairman Nadler. You want the resolution read? Very  
397 well. The clerk will read the resolution.

398 Mr. Buck. Thank you.

399 Chairman Nadler. The clerk will read the amendment in  
400 the nature of a substitute.

401 Ms. Strasser. Amendment in the nature of a substitute  
402 to a resolution offered by Mr. Nadler. Strike all after the  
403 resolving clause and insert the following: "That upon the  
404 adoption of this resolution, the chairman of the Committee of  
405 the Judiciary is authorized to issue subpoenas for documents  
406 and testimony relating to the following: final report  
407 authored by the Office of the Special Counsel, Robert S.  
408 Mueller, III, pursuant to Order Number 3915-2017, and any  
409 accompanying exhibits, annexes, tables, appendices, other  
410 attachments, and all evidence referred to in the report; and  
411 underlying evidence collected, materials prepared, or  
412 documents used by the Office of the Special Counsel, Robert  
413 S. Mueller, III, in the investigation conducted pursuant to  
414 Order Number 3915, 2017.

415 In addition, the chairman at his discretion and as he  
416 determines necessary, is authorized to issue subpoenas for  
417 documents and testimony to the following individuals or to

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418 agents who may have received documents from White House  
419 relevant to the investigation on Special Counsel Robert S.  
420 Mueller, III, conducted pursuant to Order Number 3915-2017,  
421 thereby effecting a waiver of potential applicable  
422 privileges: Donald F. McGahn, II; Steven Bannon; Hope Hicks;  
423 Reince Priebus;, Ann Donaldson.

424 This resolution is adopted pursuant to Rule 3 of the  
425 Committee on the Judiciary and Clause 2(m) of Rule XI of the  
426 U.S. House of Representatives."

427 Chairman Nadler. I will recognize myself to explain the  
428 amendment.

429 This amendment makes only technical changes to the  
430 underlying resolution. I would like to use my time to  
431 elaborate on the point made in my opening statement, that  
432 there is ample precedent from other investigations involving  
433 allegations of wrongdoing by the President for the Judiciary  
434 Committee to receive not just the full report, but all of the  
435 underlying evidence, including grand jury material.

436 In the investigation of Bill Clinton, the independent  
437 counsel, Ken Starr, produced to Congress a 445-page report,  
438 several thousand pages of appendices, and 17 boxes of  
439 underlying evidence and other materials. These boxes  
440 included all of the grand jury information protected by Rule  
441 6(e) of the Federal Rules of Criminal Procedure.

442 The Starr report and the underlying evidence and

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443 materials produced to this committee fill up volume after  
444 volume of the record in the Clinton impeachment proceedings.  
445 I am holding up only two of these many volumes that contain  
446 some of the evidence and materials underlying the Starr  
447 report that he produced to Congress. Here is Volume 4, Part  
448 2 and 3 that contain supplemental materials from the Starr  
449 report. All of these materials were delivered to the House  
450 immediately Ken Starr completed the report.

451 Looking at Volume 4, Part 3, it is filled with the grand  
452 jury testimony and other evidence from the Starr  
453 investigation that was produced to the House Judiciary  
454 Committee. For example, on page 3341, there is grand jury  
455 testimony of Stacy Desmond Porter. Here is a copy of it.  
456 There were boxes and boxes of such information produced by  
457 Ken Starr. Starr sought and obtained authorization from the  
458 court overseeing the grand jury to share the grand jury  
459 materials with Congress. A similar order permitting Congress  
460 to receive the grand jury materials in the Mueller  
461 investigation can and should be obtained here.

462 The materials produced to Congress by Starr also  
463 included the interview memoranda of the witnesses who agreed  
464 to be voluntarily interviewed by Starr's office during his  
465 investigation, all of which were produced to the House  
466 Judiciary Committee. For example, on page 3523, there is one  
467 of the many memorandum investigation interviews of witnesses



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468 by Starr and his staff. This one is of Deborah Ann Schiff.  
469 Here is a copy of it. There were boxes of such information  
470 produced by Ken Starr. The same type of information has to  
471 be produced here, especially when there were approximately  
472 500 witnesses interviewed in the Mueller investigation as the  
473 Attorney General stated in his March 24th letter to the House  
474 and Senate Judiciary Committees.

475 In the Watergate investigation, the Justice Department  
476 did exactly the same thing after the grand jury considered  
477 evidence and issued a report describing potentially criminal  
478 acts by President Nixon. The Justice Department filed briefs  
479 fully supporting disclosure of the report to the House  
480 Judiciary Committee, and made the point that, "The need for  
481 the House to be able to make its profoundly important  
482 judgment on the basis of all available information is as  
483 compelling as any that could be conceived." And here are  
484 just two of the volumes from the Nixon impeachment  
485 proceedings that include some of the grand jury material,  
486 just some of the grand material that was produced to  
487 Congress, Volumes 7 and 8 from the hearings before the House  
488 Judiciary Committee.

489 Looking at Volume 7, it is filled with grand jury  
490 testimony and other evidence from the investigation that was  
491 produced to the House Judiciary Committee. For example, on  
492 page 688 of Volume 8, there is the grand jury testimony of

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493 Rosemary Woods. Here is a copy of it. There were volumes  
494 and volumes of such information produced in the Watergate  
495 investigation to the House Judiciary Committee.

496       These examples of Congress receiving all of the relevant  
497 evidence in other analogous investigations helps show how  
498 unprecedented it would be for Attorney General Barr to  
499 withhold from Congress potentially significant portions of  
500 Special Counsel Mueller's report and the underlying evidence  
501 and materials. The same type of information can and should  
502 be produced here.

503       I ask unanimous consent to include these materials in  
504 the record.

505       [The information follows:]

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507 Chairman Nadler. This subpoena authorization gives this  
508 committee the ability to compel production of the full report  
509 and related documents if the Attorney General departs from  
510 these and other precedents and refuses to produce to Congress  
511 the complete record of Special Counsel Mueller's  
512 investigation. I yield back the balance of my time.

513 I now recognize the ranking member of the Judiciary  
514 Committee, the gentleman from Georgia, Mr. Collins, for any  
515 comments he may have on the amendment in the nature of a  
516 substitute.

517 Mr. Collins. Thank you, Mr. Chairman. As far as the  
518 substitute, that is fine, but I am glad we are using props  
519 today because this is what happening here. The chairman  
520 wants you to look at one thing when the reality is another  
521 thing. He is wanting you to look at this bottle of water and  
522 say this is full, and then he is wanting you to look at this  
523 bottle of water and say it is full, too. It doesn't work.  
524 You can't say the Starr report, or even going back to  
525 impeachment which we will get to in a minute, and then come  
526 along and say Mueller is full, too. You see, it is the same.  
527 They are not the same.

528 And as long as we perpetrate this fraud of saying that  
529 they are the same, then we are going to continue this process  
530 of saying that we have got a problem here because the Starr  
531 report, which actually came out, let's actually speak to what

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532 it said. Starr had a requirement under the Independent  
533 Counsel Act, 28 U.S.C. 595, to advise the House of  
534 Representatives of any substantial credible information which  
535 may constitute grounds for an impeachment.

536 Remember, it was the Janet Reno Justice Department after  
537 the Starr report that rewrote the regulations that we are  
538 under today. Starr, Mueller, two different things. And if  
539 we understand this, then we can understand the problem we  
540 have here. I feel for the chairman. He is trying to make an  
541 analogy that just won't work. He is doing as good a job as  
542 he possibly can. It just doesn't work.

543 The other interesting thing in here is he has used two  
544 precedents for getting this information, both of which are  
545 impeachment. If the chairman truly wanted to get at this  
546 information, then he can go to what I believe many in their  
547 heart desire is open the impeachment inquiry. Maybe that is  
548 what we are going to get to today. But if you use the  
549 precedent of impeachment, not the precedent of subpoenas,  
550 then there is a problem.

551 And we have got to understand this is nothing. If this  
552 was simply about the Mueller report today and we had waited  
553 until after we got the Mueller report and we said there is  
554 still stuff we don't like, then I could see this happening.  
555 I could see why would we would come together and ask for  
556 subpoenas. Any attorney, that is what you do. When you

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557 don't get what you want, you ask for the subpoenas, not  
558 beforehand when the Attorney General has already said I am  
559 going to do this.

560 So the problem is, look, it is a tough problem. I feel  
561 for him. But as long as you are trying to compare the full  
562 and the empty and say they are both full, that is going to be  
563 a problem. The problem also I have with this is, is it just  
564 isn't about the Attorney General and the Mueller report,  
565 because he went ahead and added five other individuals. Why  
566 those five other individuals? Let's take a look at the  
567 names.

568 The five other individuals: Don McGahn, Steve Bannon,  
569 Hope Hicks, Reince Priebus, and Ann Donaldson, all of which  
570 either gave information or answered and responded to their  
571 initial letters. Why these five? They are close to the  
572 President. The closer you get to the President, the press  
573 writes about it. The press writes about associates of the  
574 President and they get a subpoena. Let's take this for what  
575 it is. We don't have our popcorn machine yet. We are  
576 getting it for our side because this is great political  
577 theater. But as long as they are trying to convince you that  
578 this one and this one are the same, then we are going to down  
579 the same sad road. With that, Mr. Chairman, I yield back.

580 Chairman Nadler. I thank the gentleman. I just want to  
581 comment on one thing. The argument is made that the prior

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582 history is irrelevant because Mr. Jaworski and Mr. Starr  
583 operated under a different law than Mr. Mueller is operating.  
584 That fact is true. However, we have the same constitutional  
585 rights as the committee did in those days, and we have the  
586 same constitutional duty as the committee did in those days.  
587 And we have the right and the necessity to get all the  
588 information to fulfill our constitutional duty.

589 Are there any amendments to the amendment in the nature  
590 of a substitute?

591 [No response.]

592 Chairman Nadler. Hearing none --

593 Mr. Buck. Mr. Chairman, I have an amendment.

594 Chairman Nadler. The clerk will report the amendment.

595 Mr. Cicilline. Mr. Chairman, I reserve a point of  
596 order.

597 Chairman Nadler. The gentlelady --

598 Mr. Collins. The gentleman.

599 Chairman Nadler. The gentleman reserves a point of  
600 order.

601 Ms. Strasser. Amendment to the amendment in the nature  
602 of a substitute, offered by Representative Ken Buck, of  
603 Colorado. At the end of the resolution, insert the following  
604 paragraph: "This resolution shall not be construed as  
605 authorizing the chairman to issue a subpoena for the  
606 production of information where such production would violate

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607 Rule 6(e) of the Federal Rules of Criminal Procedure."

608 [The information follows:]

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610 Chairman Nadler. The gentleman is recognized to explain  
611 his amendment.

612 Mr. Buck. Thank you, Mr. Chairman. Mr. Chairman, in  
613 Greek mythology, Prometheus looked down from the heavens and  
614 saw man eating raw meat. Out of pity, he stole fire from the  
615 heavens, came to earth, and gave fire to man so man could  
616 cook his food. This gift had unintended consequences. Man  
617 used fire to forge metal into swords. With new weapons man  
618 went to war. This is a cautionary tale about unintended  
619 consequences, a lesson we should be mindful of today.

620 The current special counsel regulations were adopted in  
621 1999 after Congress allowed the old independent counsel law  
622 to expire. These Clinton-era regs authorized the appointment  
623 of Robert Mueller as special counsel and guided his  
624 investigation. They also limit what the AG can release. So  
625 they strike a balance between disclosure and protection of  
626 classified and grand jury information. This resolution,  
627 however, leads us down the wrong path. The resolution fails  
628 to ensure certain information remains protected. This will  
629 have unintended consequences.

630 First, this resolution risks politicizing future special  
631 counsel investigations. By protecting grand jury information  
632 from public release, the regs encourage the special counsel  
633 to produce a candid report for the AG. By compelling release  
634 of an unredacted report, however, the committee risks



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635 chilling future investigations and jeopardizes the special  
636 counsel process. This will not serve justice. It will  
637 undermine it.

638 Second, the public release of the full report could  
639 compromise intelligence sources and methods. General Barr  
640 expressed concern about this issue in a March 29th letter to  
641 Chairman Nadler. As much as Democrats may hate the  
642 President, I would hope you love America more. If love  
643 trumps hate, we should afford the AG time to redact  
644 classified information before providing us with a report that  
645 could be shared with the public.

646 Third, this resolution fails to protect grand jury  
647 information from disclosure. This is information that by law  
648 needs to be protected as confidential. Under the regs, the  
649 AG is required to redact this information. General Barr  
650 wrote to the chairman on March 29th that, "We are preparing  
651 the report for release, making the redactions that are  
652 required. The special counsel is assisting us in this  
653 process. Specifically, we are well along in the process of  
654 identifying and redacting the following: materials subject  
655 to Federal Rule of Criminal Procedure 6(e) that by law cannot  
656 be made public."

657 Rule 6(e) is information produced in front of the grand  
658 jury. As a former prosecutor, I hold the grand jury process  
659 and the protection against disclosure sacrosanct. I would

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660 urge my colleagues do not undermine the grand jury process  
661 for the sake of politics. This sets a dangerous precedent  
662 that is dangerously short-sighted.

663 My amendment is simple. It modifies the resolution to  
664 limit the subpoena to exclude production of any information  
665 related to grand jury materials. This amendment is  
666 consistent with the special counsel regs that have been in  
667 place for 20 years over which time Democrats and Republicans  
668 in Congress during two Democratic administrations and two  
669 Republican administrations have respected.

670 This amendment is also completely consistent with H.  
671 Con. Res. 24, Chairman Nadler's resolution that the House  
672 passed by a vote of 420-0 on March 14th. If you voted for  
673 Chairman Nadler's resolution 3 weeks ago, you essentially  
674 voted for the special counsel regulations, and you also voted  
675 to protect grand jury information from disclosure, the  
676 principle found in my amendment. For the sake of  
677 consistency, you should report my amendment today. It will  
678 help ensure we avoid unintended consequences.

679 I ask unanimous consent that Attorney General Barr's  
680 letter of March 29th, 2019 to Chairman Nadler to be included  
681 in the record.

682 Chairman Nadler. Without objection.

683 [The information follows:]

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685 Mr. Buck. I urge a yes vote on the amendment.

686 Chairman Nadler. Does the gentleman from Rhode Island  
687 insist on his point of order?

688 Mr. Cicilline. I do not, Mr. Chairman.

689 Chairman Nadler. The gentleman from Rhode Island does  
690 not insist on his point of order. I will now recognize  
691 myself in opposition to the amendment.

692 The amendment says that "This resolution shall not be  
693 construed as authorizing a subpoena for the production of  
694 Rule 6(e) information." This committee's request for grand  
695 jury materials, which is to say the 6(e) information, is  
696 fully consistent with past instances which I have outlined in  
697 my initial comments in which the Justice Department has  
698 provided this information to Congress. The Justice  
699 Department can provide these materials to Congress by seeking  
700 authorization from the District Court as it has in the past.

701 In response, for example, to Republican-led  
702 congressional requests, the Justice Department turned over  
703 unprecedented levels of materials in the 114th and 115th  
704 Congress, including classified materials, deliberative  
705 process documents, and information related to ongoing  
706 investigations. We need these materials to fulfill our  
707 constitutional obligations, period. Our chief constitutional  
708 obligation is to hold the President accountable, especially  
709 in an instance where the Department of Justice says it cannot

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710 hold the President accountable because, as a matter of law,  
711 you cannot indict a president and in which the Attorney  
712 General tells us that a president cannot commit obstruction  
713 of justice.

714 Those judgments must be made by Congress, not by a  
715 political appointee, the Attorney General. We need this  
716 information to make those judgments, and the interests can be  
717 protected by this Congress deciding which of that information  
718 can be released publicly. But Congress is entitled to all of  
719 it, and, therefore, I ask opposition to this amendment.

720 Is there any other discussion on the amendment?

721 Mr. Sensenbrenner. Mr. Chairman?

722 Chairman Nadler. The gentleman from Wisconsin.

723 Mr. Sensenbrenner. Mr. Chairman, I move to strike the  
724 last word.

725 Chairman Nadler. The gentleman is recognized.

726 Mr. Sensenbrenner. Mr. Chairman, the chair and his  
727 supporters are putting the cart before the horse. And I just  
728 draw the attention of the committee to today's *Roll Call*,  
729 hardly a Republican mouthpiece. And what does it say?

730 "Mueller magic not in subpoenas. Democrats can send a  
731 message, but it is one without teeth." I will delegate  
732 myself to become a dentist for the next 4-and-a-half minutes.

733 The chairman of the committee, the distinguished  
734 gentleman from New York, you know, says there was grand jury

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735 material that was submitted both in the Nixon and Clinton  
736 impeachments. That is correct, but that grand jury material  
737 was submitted only after the court in D.C. allowed it to be  
738 shared with Congress and made public. That has not happened  
739 in this case if there is any grand jury material in the  
740 Mueller report, and I think we all know that there is grand  
741 material in the Mueller report.

742 So the thing to do to put teeth into a subpoena is for  
743 Congress and this committee to go to court and to ask for an  
744 order allowing for the release of the grand jury material.  
745 Otherwise, you are going to see the Justice Department move  
746 to quash the subpoena that I am sure will be issued today,  
747 and it will be in courts for months and maybe years until the  
748 Supreme Court decides this issue because it is a dispute  
749 between the legislative and executive branches of government.

750 Chairman Nadler. Will the gentleman yield?

751 Mr. Sensenbrenner. Let me finish, please. And I will  
752 be happy to be a co-plaintiff in the motion before the  
753 district court as I am sure all of us would be because the  
754 resolution that was passed 3 weeks ago was passed  
755 unanimously. I voted for it. All of my Republican  
756 colleagues voted for it. And the way to get the material  
757 that is sought by this subpoena quickly, promptly, and  
758 without extended litigation is to go to court and get the  
759 same kind of order that Mr. Starr got when he sent his

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760 material over as independent counsel and what Mr. Jaworski  
761 got when he sent his material over as special prosecutor in  
762 the Richard Nixon impeachment.

763 Now, secondly, I think we all want to get to the bottom  
764 of this, and it is only full disclosure, in my opinion, that  
765 will get to the bottom of this. The law requires that there  
766 be certain conditions precedent to get that full disclosure,  
767 one of which, as far as the grand jury material and Rule 6(e)  
768 of the Federal Rules of Criminal Procedure, is going to court  
769 and getting the order, if the court should so desire and be  
770 required to, to allow the Justice Department to release this  
771 material. Otherwise, the Justice Department puts itself in  
772 the same position as a grand jury witness who breaks the  
773 secrecy rule and releases his or her testimony before the  
774 grand jury, and that is a Federal crime.

775 So, you know, it seems to me that if we want to protect  
776 witnesses under the same rule that the Justice Department is  
777 being protected, we ought to do what we need to do first, and  
778 that is go to court and let the judge make the decision. And  
779 now I am happy to yield to the chairman.

780 Chairman Nadler. I thank the gentleman for yielding.  
781 We will, as appropriate, go to court. We think we need a  
782 subpoena first, but we will go to court. We have asked the  
783 Attorney General to go to court. He has thus far declined  
784 our request, but we will do whatever is necessary, be it

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785 subpoena or courts, to get this material.

786 Mr. Sensenbrenner. You know, reclaiming my time, you  
787 know, the thing is, is Mr. Starr got the appropriate order  
788 without us being on his back. Jaworski got the appropriate  
789 order without the Judiciary Committee being on its back. And  
790 that material was used in both the Nixon and in the Clinton  
791 impeachments.

792 Mr. Cicilline. Will the gentleman yield for a question?

793 Mr. Sensenbrenner. No, I will not. And as I recall  
794 there were obstruction of justice articles of impeachment  
795 voted out by this committee, and, in the case of Clinton,  
796 approved by the House of Representatives, and that was an  
797 issue in both of those impeachments. So, you know, again,  
798 look at *Roll Call*, you know. Again, *Roll Call* is not printed  
799 by the Koch brothers, and it says "Democrats can send a  
800 message, but it's one without teeth." It is about time that  
801 when we want to send a message, we send one with teeth, and  
802 hopefully the rest of the news media will not be duped as  
803 *Roll Call* was not in getting it right. Thank you.

804 Chairman Nadler. The gentleman's time has expired. The  
805 gentlelady from Texas.

806 Ms. Jackson Lee. I thank the gentleman, and I thank my  
807 colleagues, both Republicans and Democrats, who sit on this  
808 committee to do justice and to adhere to the rule of law. As  
809 I read the resolution proposed by the chair and the majority,

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810 it provides an authorization. It does not dictate an  
811 issuance of a subpoena. And I refer to my colleagues to  
812 really some of the underlying reasons why we need to move  
813 forward on a subpoena. For all we know, the Attorney General  
814 may respond and present us with the Mueller report in its  
815 totality today at the end of business.

816 But in his letter on March 24th, the Attorney General  
817 started out by saying that it was his intent to summarize the  
818 principle conclusions reached by the special counsel. And of  
819 course he tried to walk that back, but, in essence, he tried  
820 to give us 4 pages as a complete summary of the entire  
821 Mueller report. He goes on to say on the question of  
822 obstruction of justice that the DOJ did not make a  
823 traditional prosecutorial judgment. That may be accurate,  
824 but the standards that you adhere to by the second  
825 constitutional body, the executive in Article II, has larger  
826 parameters as to whether or not the Administration followed  
827 the rule of law and actually adhered to guidelines or actions  
828 appropriate for a president of the United States.

829 Further, the Attorney General attempted to swat away the  
830 idea of any Russian coordination. He did that by suggesting  
831 that the attorney, Mueller, did not find an underlying crime,  
832 and, therefore, refused to move forward on the obstruction,  
833 refused to move forward on the obstruction on the basis of  
834 not an indictment or a crime. And we also know that Attorney



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835 General Barr has already made his point very clear about his  
836 position on the indictment of a President. We do not sit  
837 here in the role of a grand jury to indict the President, but  
838 we sit here as a body that to proceed with its constitutional  
839 duties to provide oversight and transparency.

840 Let me share with my colleagues what has happened in the  
841 past. Dan Burton, former chair of the Oversight Committee,  
842 issued a thousand unilateral subpoenas in the 1990s regarding  
843 the Clinton Administration. Lamar Smith of the Science  
844 Committee issued 25 subpoenas in his first year of  
845 chairmanship. Before 2015, this committee had not issued one  
846 subpoenas in 21 years. Chairman Issa issued 100-plus  
847 subpoenas, exceeding by over 20 percent the number of  
848 subpoenas from Dems and Republicans, lawmakers of any  
849 committee. And then Chairman Gowdy of the Benghazi  
850 Committee, who sent U.S. marshals to 70 witness' homes  
851 without asking one of them to come voluntarily. I, frankly,  
852 believe that we are being both fair and balanced in our  
853 efforts --

854 Mr. Sensenbrenner. Would the gentlewoman yield?

855 Ms. Jackson Lee. I would be happy to yield.

856 Mr. Sensenbrenner. Just for the record, I was chair of  
857 this committee for 6 years, and I didn't sign one subpoena at  
858 all. You know, I got what I needed out of the Administration  
859 without having to compel it. So there is a difference

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860 between nice and being less than nice.

861 Ms. Jackson Lee. Mr. Sensenbrenner, thank you. I am  
862 restoring my time. I am reclaiming my time. As you well  
863 know, you have not been mentioned. You have not been  
864 mentioned, nor has the Judiciary Committee been mentioned.  
865 But the point being made is that there has been a history of  
866 subpoenas offered in other areas in other committees.

867 And in this instance, I think the Judiciary Committee is  
868 being extremely fair. So thank you so very much for that  
869 clarification that Chairman Sensenbrenner did not, but in  
870 this instance, I believe that the committee is being fair.  
871 Mr. Nadler is being fair. This is a resolution to authorize  
872 the issuance of a subpoena, and I ask my colleagues to  
873 support this resolution. I yield back.

874 Chairman Nadler. Thank you. The gentleman from  
875 Arizona, Mr. Biggs, is recognized.

876 Mr. Biggs. Thank you, Mr. Chairman. I ask unanimous  
877 consent that an article published April 1st, 2019 in the  
878 *Atlantic* written by Ben Wittes and entitled, "Bill Barr Has  
879 Promised Transparency," be entered into the record.

880 Chairman Nadler. Without objection.

881 [The information follows:]

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883           Mr. Biggs. Thank you. Wittes is the editor-in-chief of  
884   *Lawfare* and a senior fellow at the Brookings Institution.  
885   That is the same think tank where Norm Eisen, a member of the  
886   chairman's staff, is also a senior fellow, and Barry Berke,  
887   another member of the chairman's staff, has published  
888   extensively. And with that, I yield to the gentleman from  
889   Colorado, Mr. Buck.

890           Mr. Buck. I thank the gentleman from Arizona. Mr.  
891   Chairman, we are discussing basically what the standard is  
892   for the release of grand jury testimony in the context of an  
893   independent counsel or special counsel investigation. And  
894   thankfully you announced the standard on September 9th, 1998  
895   when you appeared on the *Charlie Rose Show*. That is the same  
896   day that independent counsel, Ken Starr, and I will repeat  
897   that, the same day that independent counsel, Ken Starr,  
898   delivered his report into the Clinton investigation to  
899   Congress.

900           Here is what you said when explaining why it would be  
901   unwise and unfair to release grand jury materials. "Now, Mr.  
902   Starr in his transmittal letter to the Speaker and the  
903   Minority Leader made it clear that much of this material is  
904   Federal Rule 6(e) material. That is material that by law,  
905   unless contravened by a vote of the House, must be kept  
906   secret. It is grand jury material. It represents statements  
907   which may or may not be true by various witnesses, salacious

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908 material, all kinds of material that it would be unfair to  
909 release." Our chairman even went so far as to suggest in  
910 that interview that certain material "must not be released at  
911 all."

912 I do want to mention that under the independent counsel  
913 statute, Congress held a statutory role of oversight so it  
914 would have at least been proper for Congress to consider if  
915 grand jury materials should be released, but that law has  
916 expired. Under current law, the Attorney General is left  
917 with the responsibility of protecting grand jury materials, a  
918 different person responsible for deciding, a different  
919 responsibility all together. Despite changes in the law, the  
920 chairman's concerns from 1998 about the questionable value in  
921 releasing grand jury material and the need to protect those  
922 materials are still true today.

923 The chairman's position was also on display 3 weeks ago  
924 when the House unanimously approved his resolution, H. Con.  
925 Res. 24, calling for the release of the special counsel  
926 report while excluding from disclosure any information  
927 protected by law which would necessarily protect grand jury  
928 material. Nevertheless, in a *New York Times* op-ed this week,  
929 the chairman wrote, "The Department of Justice has an  
930 obligation to provide it," meaning the full Mueller report,  
931 "in its entirety without delay."

932 Mr. Chairman, you had it right over 20 years ago. You

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933 supported the protection of grand jury information, and I  
934 agree with that. You had it right 3 weeks ago. Everyone on  
935 this committee voted for your resolution to protect against  
936 the release of 6(e) materials. Mr. Chairman, Attorney  
937 General Barr agrees with you. Last week he wrote to you to  
938 tell that he was working with the special counsel to redact  
939 grand jury materials.

940 Your historic standard, one you held for 7,492 days,  
941 from September 8th, 1998 at least until March 14th, 2019, is  
942 the same standard that can be found in my amendment. The  
943 standards says the grand jury materials should not be  
944 disclosed. That is the right standard, and I urge the  
945 committee to adopt the standard. And I yield back to the  
946 gentleman from Arizona.

947 Mr. Biggs. Reclaiming my time.

948 Mr. Cicilline. Mr. Chairman?

949 Chairman Nadler. The gentleman from Rhode Island.

950 Mr. Biggs. Excuse me. I still have time. I reclaimed  
951 my time.

952 Chairman Nadler. Oh, I am sorry.

953 Mr. Biggs. Thank you.

954 Chairman Nadler. Mr. Biggs, continue.

955 Mr. Biggs. Thank you, Mr. Chairman. I support the Ken  
956 Buck, Representative Buck's, amendment to the amendment in  
957 the nature of a substitute to the resolution. And one thing

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958 I want to point out is that when I hear people intimate that  
959 the chairman merely has the authorization to issue a  
960 subpoena, I get this feeling that maybe this isn't a done  
961 deal. But it is a done deal because the chairman in his  
962 response to the gentleman from Wisconsin said very clearly  
963 that before going to court we are going to issue a subpoena.

964 So the normal process would naturally be to go to the  
965 court and ask for this information to be made available, but  
966 that is not what is going to happen here. You are going to  
967 see subpoenas issued, and they are going to be issued  
968 because, as the chairman said in his opening statement, the  
969 Attorney General may do this, and I am paraphrasing of  
970 course, and President Trump may do that. In other words, he  
971 would suggest that this would be conditional, but he is  
972 acting and this resolution is going to go forward regardless  
973 of what Mr. Barr provides, even if it is in compliance with  
974 Rule 6(e). My time has expired.

975 Chairman Nadler. The gentleman from Rhode Island.

976 Mr. Cicilline. Thank you, Mr. Chairman. I move to  
977 strike the last word.

978 Chairman Nadler. The gentleman is recognized.

979 Mr. Cicilline. Mr. Chairman, I just want to make two  
980 brief points. One is the gentleman from Wisconsin referenced  
981 the Starr report and the Jaworski report as precedent for not  
982 issuing a subpoena and, in fact, going to court. It should

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983 be noted that in both of those cases the special and  
984 independent counsel went to court to seek authorization for  
985 the release of the grand jury testimony before it was  
986 delivered to Congress. They did that on their own. It  
987 didn't require Congress to litigate it.

988       So those individuals recognized that it was important  
989 when they delivered the report to also deliver the underlying  
990 documents, and they sought permission from the court to do  
991 it. That has not happened in this case. In fact, Mr. Barr  
992 has done just the opposite. He has attempted to keep this  
993 information from Congress. So the notion that we should just  
994 wait and sort of pray and hope that Mr. Barr will suddenly  
995 find his way to the courthouse to seek authorization, I  
996 think, is foolish. This subpoena will require him to take  
997 that action because as the gentleman from Wisconsin said, he  
998 could move to quash the subpoena. That is one course of  
999 action. He could also go to court and move for the  
1000 production of 6(e) materials so he can comply with the  
1001 subpoena, and that is what we are hoping he will do if, in  
1002 fact, they are interested in getting this information for  
1003 Congress.

1004       So I urge my colleagues to oppose this amendment, to set  
1005 the precedent so that, in fact, this committee can get the  
1006 full report and all the supporting materials so we can do our  
1007 oversight responsibility. And as the chairman said, our

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1008 constitutional responsibilities have not changed even if some  
1009 regulation has. I urge a no vote on the amendment and yield  
1010 the balance of my time to the chairman.

1011 Chairman Nadler. I thank the gentleman.

1012 I just want to point out that I was right 21 years ago,  
1013 I am right now, and it is totally consistent, because we are  
1014 urging now that the underlying 6(e) material be produced to  
1015 the committee. In 1998, that material had been produced to  
1016 the Congress, and what we were discussing was its release to  
1017 the public. And before 6(e) material is released to the  
1018 public, it has to be reviewed if some of it should not be  
1019 released to the public for privacy and other reasons. But  
1020 that determination was made then by Congress, and it should  
1021 be made now by Congress.

1022 We are asking now that the material be given to Congress  
1023 so we can fulfill our constitutional responsibilities. In  
1024 1998, the material had been given prior to that debate to  
1025 Congress so Congress could fulfill its constitutional  
1026 responsibilities, and my comments on the floor then and the  
1027 debate then was not about whether the material should go to  
1028 Congress; it already had. It was about whether it should be  
1029 released to the public in its entirety, and I said then that  
1030 you cannot release 6(e) material entirely to the public  
1031 without reviewing it, and that is still true. But it was  
1032 then and should be now released to the Congress, to this



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1033 committee, in its entirety.

1034 Mr. Sensenbrenner. Would the gentleman yield?

1035 Chairman Nadler. Yes, I will yield.

1036 Mr. Sensenbrenner. Would the gentleman report releasing  
1037 to the public the material that we redacted in the Clinton  
1038 impeachment?

1039 Mr. Cicilline. I will reclaim my time. I would like to  
1040 focus on the issue before this committee. I am reclaiming my  
1041 time, Mr. Chairman.

1042 But I again want to suggest that this is an important  
1043 responsibility to this committee to ensure that no one is  
1044 above the law, that we follow the facts where they lead us,  
1045 that this investigation was conducted on behalf of the  
1046 American people. When our democracy was attacked by a  
1047 foreign adversary, we fought hard to protect Mr. Mueller so  
1048 he could complete his work free from political interference,  
1049 and now we have a right, this committee has the right and the  
1050 responsibility to see the full contents of this report and  
1051 the supporting materials, and I urge a no on this amendment  
1052 and yield the balance of my time to the Chairman.

1053 Chairman Nadler. I thank the gentleman for yielding.

1054 Again, we have the right and the duty to protect certain  
1055 material from public disclosure. If we redacted it from the  
1056 public 20 years ago, I assume we had good reason to do that.  
1057 But the question before us now is not public release of

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1058 information. It is release to Congress to do our  
1059 constitutional duties, and it is a very different situation.

1060 I yield back to the gentleman.

1061 Mr. Cicilline. I yield back, Mr. Chairman.

1062 Chairman Nadler. The gentleman from Texas, Mr.  
1063 Ratcliffe, is recognized.

1064 Mr. Ratcliffe. Thank you, Mr. Chairman.

1065 I move to strike the last word.

1066 Mr. Chairman, I have been listening to the arguments  
1067 this morning. I have been trying to decide what is worse.  
1068 Was it last week when within 24 hours of the Attorney General  
1069 issuing his summary of the Mueller findings I listened to the  
1070 Chairman of the House Intelligence Committee, Adam Schiff,  
1071 demand the immediate full release of the Mueller report  
1072 without consideration for classified information? The  
1073 Chairman of the Intelligence Committee telling all 17  
1074 intelligence agencies over which he had oversight essentially  
1075 I do not give a damn about classified information, I want the  
1076 full release of that report.

1077 Or was it this week, when I am sitting here today  
1078 listening to the Chairman of the Judiciary Committee say I do  
1079 not care what the law says, I do not care what the Special  
1080 Counsel regulations say, I do not care that the Attorney  
1081 General has complied with both, that the Attorney General has  
1082 done everything the law requires, everything the Special

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1083 Counsel regulations require, and is promising to do more, but  
1084 that is not good enough, and now he is going to be subpoenaed  
1085 for that.

1086 In that theater of the absurd, I am still trying to  
1087 decide which of those is worse. The Attorney General did not  
1088 comply with the Democrats' arbitrary April 2nd demand  
1089 deadline because he cannot comply, because the law precludes  
1090 him from complying, because the Attorney General was not  
1091 going to commit crimes to comply with that deadline.

1092 Mr. Chairman, today I heard you say over and over again  
1093 Congress requires, Congress requires, there are  
1094 constitutional rights, or there is a necessity for this  
1095 information. What I did not hear was what law the Special  
1096 Counsel -- where in the Special Counsel regulation does it  
1097 say that the Attorney General must turn over an un-redacted  
1098 full Special Counsel report? The Special Counsel regulation  
1099 does not say that. No law says that.

1100 The Attorney General has promised to provide as much  
1101 transparency as he possibly can, but I am afraid that is  
1102 never going to be good enough for some in here, and that is  
1103 because we are here having this argument because some, not  
1104 all, of my Democratic colleagues promised the American people  
1105 evidence that never existed. Some, not all, Democrats  
1106 shouted fire in the theater of the American public, feeding a  
1107 false Trump-Russia collusion narrative that never existed and

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1108 that, in fact, some Democrats created with a fake, phony  
1109 dossier.

1110 Now Special Counsel Mueller, who some Democrats demanded  
1111 be protected so that he could do his job, did his job, and  
1112 the minute that he finished doing that job and said no  
1113 collusion, that the Trump-Russia collusion narrative does not  
1114 exist, is not real, protect Bob Mueller suddenly has become  
1115 to hell with Bob Mueller.

1116 I have always believed that Bob Mueller could write the  
1117 definitive narrative on how Russia tried to meddle in our  
1118 election. I have never called what Bob Mueller was doing in  
1119 that regard a witch hunt. But Bob Mueller has provided his  
1120 findings to the Attorney General, who has accurately  
1121 summarized those.

1122 And with respect to Trump-Russia collusion, Bob Mueller  
1123 has said there are no witches. So these investigations  
1124 should end. We should move on. We should not be issuing  
1125 subpoenas today.

1126 But if we are going to issue subpoenas today, let's not  
1127 issue a subpoena for the Mueller report. Let's issue one for  
1128 Bob Mueller.

1129 Mr. Cohen. Would the gentleman yield?

1130 Mr. Raskin. Would the gentleman yield?

1131 Mr. Ratcliffe. Let me finish this thought.

1132 Let Bob Mueller come and let's ask Bob Mueller whether

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1133 or not he thinks that the report that he created should be  
1134 disclosed without considerations of redactions of classified  
1135 national security information or without redactions for grand  
1136 jury information or other information relating to ongoing  
1137 investigations. I may have questioned Bob Mueller's actions  
1138 in certain regards, but I have never questioned his  
1139 integrity, and I would be happy to hear his answer under oath  
1140 before this committee with respect to that issue.

1141 So I urge all my colleagues to follow the law and to  
1142 therefore support the Buck amendment.

1143 And I yield to the gentleman from Georgia.

1144 Chairman Nadler. The gentleman's time has expired.

1145 Mr. Ratcliffe. I yield back.

1146 Chairman Nadler. The gentleman from Tennessee.

1147 Mr. Cohen. Thank you, Mr. Chairman.

1148 I was just going to say that Mr. Ratcliffe, who I  
1149 respect greatly, said that Mr. Barr accurately described the  
1150 Mueller report. We do not know that. That is why we want to  
1151 see it, so we can know if he accurately did. He talked about  
1152 he went through fire. He might be suggesting I am one of  
1153 those fire throwers. I want to find out if I was wrong, and  
1154 I want the public to see it too.

1155 I yield back the balance of my time.

1156 Chairman Nadler. The gentleman from Texas, Mr. Gohmert.

1157 Mr. Gohmert. Thank you, Mr. Chair.

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1158 I have to say, I witnessed one of the proof positive of  
1159 the brilliant mental acumen of our Chairman as he explained  
1160 adroitly how he was right 21 years ago and is right today,  
1161 just a work of beauty and argument.

1162 As Chairman said, 21 years ago, we should always  
1163 remember this as a prosecutor's report by its nature. It is  
1164 one-sided. I also said it was salacious material, all kinds  
1165 of material that it would be unfair to release.

1166 I would point out the gentleman did not know exactly  
1167 what all the material was at that time, and we do not know at  
1168 this time either. In February 1999, a New York Times  
1169 article, our current Chairman called the Starr report and  
1170 impeachment efforts a "partisan coup d'état."

1171 What has gone on in this country did absolutely,  
1172 unequivocally, no doubt about it involve collusion of people  
1173 at the highest level with a foreign entity to try to bring  
1174 down a candidate and then bring down a sitting president.  
1175 That was collusion between top FBI officials, Justice  
1176 officials, a former MI6 intelligence officer who has been  
1177 discredited by those same Justice officials, FBI officials,  
1178 but they colluded with him to try to bring down a candidate  
1179 and now a sitting president.

1180 Enough is enough. At some point, we have to say what  
1181 will be written in the annals of history of this country as  
1182 an outrageous attempt at a real coup d'état was unsuccessful.

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1183 The truth came out about who really colluded with foreign  
1184 agents.

1185 And by the way, they did involve the Democrats' campaign  
1186 and a foreign agent who was colluding with some of Putin's  
1187 agents, in all likelihood, as he was not even in Russia but  
1188 was talking by phone to Russian agents in his efforts to help  
1189 the Clinton campaign and top Justice officials bring down a  
1190 sitting president. And for us to continue this outrageous  
1191 assault on the office of president, even after the truth has  
1192 come out that there was no conspiracy by the Trump campaign  
1193 or President Trump or anybody in his family with Russia, and  
1194 to continue to push, we are still going to make a big deal  
1195 out of this, we cannot stand the fact that the facts show it  
1196 was the Democrats that colluded with foreign agents to try to  
1197 change the outcome of the election.

1198 Enough is enough, for heaven's sake. Let's please move  
1199 on. There was a time when I loved and appreciated the  
1200 current Chairman's desire to protect privacy rights. I saw  
1201 that dramatically eroded during the Obama Administration, but  
1202 I am still hoping and praying that our now-Chairman's once  
1203 great desire to protect privacy rights and to try to hold  
1204 back the bounds of what Orwell described as happening now --  
1205 obviously, the only thing you got wrong was the year, because  
1206 we have seen what the Obama Administration did with those  
1207 Orwellian abilities to spy on American citizens.

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1208           It is time to go back and clean up the mess that has  
1209       been made over years of abuse. And this subpoena, the  
1210       subpoenas is not what we need to be voting for, and I support  
1211       my friend's amendment.

1212           I yield back.

1213           Chairman Nadler. The gentleman yields back.

1214           The gentleman from Georgia is recognized.

1215           Mr. Johnson of Georgia. I move to strike the last word.

1216           Chairman Nadler. The gentleman is recognized.

1217           Mr. Johnson of Georgia. I yield to the gentle lady from  
1218       Texas.

1219           Ms. Jackson Lee. Thank you very much.

1220           I wanted to read into the record the information  
1221       regarding the Chairman of the Benghazi committee sent U.S.  
1222       Marshalls to witness without asking that witness to come in  
1223       voluntarily.

1224           And I yield back, Mr. Chairman.

1225           Chairman Nadler. Does the gentleman from Georgia yield  
1226       back?

1227           Mr. Johnson of Georgia. I yield back.

1228           Chairman Nadler. The gentle lady from Arizona, Ms.  
1229       Lesko.

1230           Mrs. Lesko. Thank you, Mr. Chairman.

1231           I want to move to strike the last word.

1232           Chairman Nadler. The gentle lady is recognized.



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1233 Mrs. Lesko. Thank you.

1234 Mr. Chairman, I support Representative Buck's amendment.

1235 What basically we are doing here is, in my opinion, the  
1236 Democrats are asking Attorney General Barr to violate the  
1237 law. It is not only against the law, but it would even be  
1238 criminal to disclose grand jury material without a court  
1239 order.

1240 It is obvious to me that this is just a continuation of  
1241 an attempt to undermine the President of the United States.  
1242 For the last two years, members on this committee have said  
1243 that there has been collusion with the Trump Administration  
1244 and President Trump with Russia to undermine the 2016  
1245 election, and as revealed in the summary, this is absolutely  
1246 not true.

1247 So I really wish that we could work on big issues  
1248 instead of continuing this circus on undermining the  
1249 President of the United States. I serve on three committees,  
1250 and on every single committee it is obvious from the very  
1251 first organizational meeting that there is a coordinated  
1252 attempt by the Democrats to undermine the President of the  
1253 United States, and this is all about the 2020 presidential  
1254 election.

1255 The public really wants us to work on big issues  
1256 together, and I ask my Democratic colleagues to do that and  
1257 quit this circus.

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1258 I will yield time to the gentleman, Mr. Jordan, from  
1259 Ohio.

1260 Mr. Jordan. I thank the gentle lady for yielding, and I  
1261 too wish to support the Buck amendment.

1262 I would just ask the fundamental question: Why are we  
1263 here? It seems to me we are here because the Mueller report  
1264 was not what the Democrats thought it was going to be. In  
1265 fact -- in fact -- it was just the opposite.

1266 What did the Attorney General tell us that the principal  
1267 findings of Mr. Mueller's report were? No new indictments,  
1268 no sealed indictments, no collusion, no obstruction.

1269 Mr. Cicilline. Would the gentleman yield?

1270 Mr. Jordan. I only got a little bit of time because --

1271 Mr. Cicilline. I only have a short question. You made  
1272 reference to the Mueller report. Have you seen it? Because  
1273 we have not.

1274 Mr. Jordan. I have seen the principal findings from the  
1275 Attorney General.

1276 Mr. Raskin. Would the gentleman yield for a quick  
1277 question? I promise it is short.

1278 You reported that the report states that there is no  
1279 obstruction. What is your basis for saying that?

1280 Mr. Jordan. The sentence where he said they did not  
1281 find obstruction. I understand the sentence you are  
1282 referring to where he talks about no exoneration either, but

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1283 then there are three paragraphs after where he points out  
1284 that there was not the elements of obstruction.

1285 In fact, the report -- excuse me -- the letter from the  
1286 Attorney General referencing the Special Counsel report said  
1287 no new indictments, no sealed indictments, no collusion, and  
1288 as I just pointed out, did not find obstruction.

1289 On the question of collusion, it was very clear. He  
1290 said there were multiple opportunities for Trump associates,  
1291 people associated with the Trump campaign to collude, and  
1292 they did not. So multiple times where the forbidden fruit  
1293 was placed in front of them and they did not bite.

1294 I would also point out this. There has been reference  
1295 from the Democrats relative to Watergate and the Clinton  
1296 Special Counsel. Watergate, there was a break-in. With  
1297 Clinton, there was perjury. With the chief charge of this  
1298 Special Counsel's investigation, there was no collusion.

1299 But here we are today. Well, actually three weeks ago,  
1300 the Chairman of the committee launched 81 letters to 60-some  
1301 different individuals, and now today we are going to subpoena  
1302 documents that the AG said he will give us in a matter of  
1303 days.

1304 But maybe the most important point, I think, is the one  
1305 that my colleague from Texas made, Mr. Ratcliffe. The idea  
1306 that the Chairman of the Intelligence Committee said he wants  
1307 everything made public, including classified information, and

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1308 the idea that the Chair of the Judiciary Committee, the House  
1309 Judiciary Committee said last week, or this week, that he  
1310 wants everything made public, including grand jury material,  
1311 that is maybe the scariest thing of all.

1312 So the Attorney General has said he is going to turn  
1313 this over in a matter of days. Let's wait. Let's get the  
1314 information, and then let's look at it then.

1315 With that, I would yield back the remaining 20 seconds  
1316 to the gentle lady from Arizona.

1317 Mrs. Lesko. I yield back my time.

1318 Chairman Nadler. The gentleman from Florida, Mr. Gaetz.

1319 Mr. Gaetz. Move to strike the last word.

1320 Chairman Nadler. The gentleman is recognized.

1321 Mr. Gaetz. Thank you. I support the Buck amendment.

1322 When the human body sees life expire within it, one of  
1323 the final sounds that it can make in dramatic and loud  
1324 fashion is a death rattle, and I would suggest to the  
1325 American people that what they are witnessing is the death  
1326 rattle of the Democrats' Russia collusion lie.

1327 For 22 months my colleagues on the other side, many of  
1328 them said there was actual evidence of collusion. And so  
1329 now, clearly seeing that that is not true, we observe our  
1330 colleagues moving through the stages of grief.

1331 First we saw shock and surprise. My colleagues would  
1332 huddle together after the findings of the Mueller report

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1333 release wondering what to do next, what play to run after  
1334 losing all credibility with the American people.

1335 And after shock, we now are in the stage of denial,  
1336 where the principal findings of the Mueller report, they just  
1337 cannot be true, they cannot be accepted, they must be false,  
1338 there must be more information we can discover.

1339 I know we are beginning the baseball season, so perhaps  
1340 a baseball analogy would be appropriate. This would be like  
1341 saying, well, we have lost the game, but we have to tweeze  
1342 through the box score to see if we won the third inning.  
1343 That is what is essentially happening with the desire of  
1344 Democrats in the production of these subpoenas and voting on  
1345 them today.

1346 It also represents a stark departure from the standards  
1347 and statements that my own Democratic colleagues have laid  
1348 out just last Congress and this Congress. I am quoting now  
1349 from the Speaker of the House, Ms. Pelosi. In February of  
1350 2018 she said, "President Trump has surrendered his  
1351 constitutional responsibility as Commander in Chief by  
1352 releasing highly classified and distorted intelligence. By  
1353 not protecting intelligence sources and methods, he just sent  
1354 his friend Putin a bouquet."

1355 Well, there was no bouquet, no untoward relationship  
1356 with Vladimir Putin, but there was a statement from the  
1357 Speaker of the House acknowledging that if you do not review

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1358 sources and methods, you are derelict in your duty to the  
1359 country. Well, now that they are going through their stages  
1360 of grief, perhaps we are approaching bargaining, because now  
1361 they are trying to bargain away their own standards.

1362 But it is not just the Speaker of the House. Let's look  
1363 to statements from the Chairman of the Judiciary Committee,  
1364 the gentleman from New York, Mr. Nadler. He said on June  
1365 28th of 2018, "Republicans are requesting documents they know  
1366 they cannot have." He continued, speaking of the  
1367 Republicans, "Right is rightly denied. They will do their  
1368 best to undermine the credibility of the Department of  
1369 Justice."

1370 Well, Mr. Chairman, you are now asking for documents you  
1371 know you cannot have, and you are doing so in order to erode  
1372 confidence in the Attorney General who leads the Department  
1373 of Justice because he has concluded that there was not  
1374 collusion and that your principal Russian narrative was not  
1375 truthful, was not credible. We were right, you were wrong,  
1376 and the American people know it.

1377 And so as we proceed now on this unfocused, 81-pronged  
1378 investigation of the Judiciary Committee has launched, as we  
1379 continue to have these mindless votes on unnecessary  
1380 subpoenas, I sincerely hope that the American people will  
1381 remember what things the Democrats were saying just months  
1382 ago, that there was collusion, that there was actual evidence

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1383 of collusion, and that sources and methods could never be  
1384 disclosed as a consequence of our fidelity to our oath and to  
1385 the people of this country.

1386 Let's have some consistency, and let's at least have  
1387 some acknowledgment that you all were not telling the truth  
1388 to the American people for an extended period of time. We  
1389 were, and you should not be trusted.

1390 I yield back.

1391 Chairman Nadler. The question occurs on the amendment.

1392 All those in favor of the Buck amendment will signify by  
1393 saying aye.

1394 Those opposed, no.

1395 In the opinion of the Chair, the noes have it.

1396 The noes have it. The amendment is not agreed to.

1397 Mr. Collins. Mr. Chairman, I ask for a recorded vote.

1398 Chairman Nadler. A roll call vote has been requested.

1399 As your name is called, all those in favor will signify  
1400 by saying aye; opposed, no.

1401 The Clerk will call the roll.

1402 Ms. Strasser. Mr. Nadler?

1403 Chairman Nadler. No.

1404 Ms. Strasser. Mr. Nadler votes no.

1405 Ms. Lofgren?

1406 Ms. Lofgren. No.

1407 Ms. Strasser. Ms. Lofgren votes no.

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1408 Ms. Jackson Lee?

1409 Ms. Jackson Lee. No.

1410 Ms. Strasser. Ms. Jackson Lee votes no.

1411 Mr. Cohen?

1412 Mr. Cohen. No.

1413 Ms. Strasser. Mr. Cohen votes no.

1414 Mr. Johnson of Georgia?

1415 Mr. Johnson of Georgia. No.

1416 Ms. Strasser. Mr. Johnson of Georgia votes no.

1417 Mr. Deutch?

1418 Mr. Deutch. No.

1419 Ms. Strasser. Mr. Deutch votes no.

1420 Ms. Bass?

1421 Mr. Richmond?

1422 Mr. Richmond. No.

1423 Ms. Strasser. Mr. Richmond votes no.

1424 Mr. Jeffries?

1425 Mr. Jeffries. No.

1426 Ms. Strasser. Mr. Jeffries votes no.

1427 Mr. Cicilline?

1428 Mr. Cicilline. No.

1429 Ms. Strasser. Mr. Cicilline votes no.

1430 Mr. Swalwell?

1431 Mr. Swalwell. No.

1432 Ms. Strasser. Mr. Swalwell votes no.



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1433 Mr. Lieu?

1434 Mr. Lieu. No.

1435 Ms. Strasser. Mr. Lieu votes no.

1436 Mr. Raskin?

1437 Mr. Raskin. No.

1438 Ms. Strasser. Mr. Raskin votes no.

1439 Ms. Jayapal?

1440 Ms. Jayapal. No.

1441 Ms. Strasser. Ms. Jayapal votes no.

1442 Mrs. Demings?

1443 Mrs. Demings. No.

1444 Ms. Strasser. Mrs. Demings votes no.

1445 Mr. Correa?

1446 Mr. Correa. No.

1447 Ms. Strasser. Mr. Correa votes no.

1448 Ms. Scanlon?

1449 Ms. Scanlon. No.

1450 Ms. Strasser. Ms. Scanlon votes no.

1451 Ms. Garcia?

1452 Ms. Garcia. No.

1453 Ms. Strasser. Ms. Garcia votes no.

1454 Mr. Neguse?

1455 Mr. Neguse. No.

1456 Ms. Strasser. Mr. Neguse votes no.

1457 Mrs. McBath?

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1458 Mrs. McBath. No.  
1459 Ms. Strasser. Mrs. McBath votes no.  
1460 Mr. Stanton?  
1461 Mr. Stanton. No.  
1462 Ms. Strasser. Mr. Stanton votes no.  
1463 Ms. Dean?  
1464 Ms. Dean. No.  
1465 Ms. Strasser. Ms. Dean votes no.  
1466 Ms. Mucarsel-Powell?  
1467 Ms. Mucarsel-Powell. No.  
1468 Ms. Strasser. Ms. Mucarsel-Powell votes no.  
1469 Ms. Escobar?  
1470 Ms. Escobar. No.  
1471 Ms. Strasser. Ms. Escobar votes no.  
1472 Mr. Collins?  
1473 Mr. Collins. Yes.  
1474 Ms. Strasser. Mr. Collins votes yes.  
1475 Mr. Sensenbrenner?  
1476 Mr. Sensenbrenner. Aye.  
1477 Ms. Strasser. Mr. Sensenbrenner votes aye.  
1478 Mr. Chabot?  
1479 Mr. Chabot. Aye.  
1480 Ms. Strasser. Mr. Chabot votes aye.  
1481 Mr. Gohmert?  
1482 Mr. Gohmert. Aye.

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1483 Ms. Strasser. Mr. Gohmert votes aye.  
1484 Mr. Jordan?  
1485 Mr. Jordan. Yes.  
1486 Ms. Strasser. Mr. Jordan votes yes.  
1487 Mr. Buck?  
1488 Mr. Buck. Aye.  
1489 Ms. Strasser. Mr. Buck votes aye.  
1490 Mr. Ratcliffe?  
1491 Mr. Ratcliffe. Yes.  
1492 Ms. Strasser. Mr. Ratcliffe votes yes.  
1493 Mrs. Roby?  
1494 Mr. Gaetz?  
1495 Mr. Gaetz. Aye.  
1496 Ms. Strasser. Mr. Gaetz votes aye.  
1497 Mr. Johnson of Louisiana?  
1498 Mr. Johnson of Louisiana. Aye.  
1499 Ms. Strasser. Mr. Johnson of Louisiana votes aye.  
1500 Mr. Biggs?  
1501 Mr. Biggs. Aye.  
1502 Ms. Strasser. Mr. Biggs votes aye.  
1503 Mr. McClintock?  
1504 Mr. McClintock. Aye.  
1505 Ms. Strasser. Mr. McClintock votes aye.  
1506 Mrs. Lesko?  
1507 Mrs. Lesko. Aye.

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1508 Ms. Strasser. Mrs. Lesko votes aye.  
1509 Mr. Reschenthaler?  
1510 Mr. Reschenthaler. Aye.  
1511 Ms. Strasser. Mr. Reschenthaler votes aye.  
1512 Mr. Cline?  
1513 Mr. Cline. Aye.  
1514 Ms. Strasser. Mr. Cline votes aye.  
1515 Mr. Armstrong?  
1516 Mr. Armstrong. Yes.  
1517 Ms. Strasser. Mr. Armstrong votes yes.  
1518 Mr. Steube?  
1519 Mr. Steube. Yes.  
1520 Ms. Strasser. Mr. Steube votes yes.  
1521 Chairman Nadler. The Clerk will report.  
1522 One more? The Clerk will suspend.  
1523 Ms. Strasser. Ms. Bass votes no.  
1524 Chairman Nadler. Has everyone else voted?  
1525 The Clerk will report.  
1526 Ms. Strasser. Ms. Jackson Lee is recorded as no.  
1527 Mr. Chairman, the vote is 16 ayes and 24 noes.  
1528 Chairman Nadler. A majority having voted against the  
1529 amendment, the amendment is not agreed to.  
1530 Are there any other amendments? Is there another  
1531 amendment?  
1532 The gentleman is recognized.

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1533 Mr. McClintock. I move to strike the last word.

1534 Chairman Nadler. The gentleman is recognized.

1535 Mr. McClintock. Thank you. Mr. Chairman, I called for  
1536 the --

1537 Chairman Nadler. Wait a minute. The Clerk will report  
1538 the amendment.

1539 Voice. There is no amendment.

1540 Chairman Nadler. I am sorry.

1541 Go ahead.

1542 Mr. McClintock. Mr. Chairman, I called for the  
1543 appointment of a Special Counsel to look into charges of  
1544 collusion before Mr. Mueller was appointed because I believed  
1545 the President was completely innocent of these outlandish  
1546 charges and that a full and independent investigation would  
1547 show that.

1548 Now it has, and I too want to see as much of the report  
1549 made public as quickly as humanly possible to put the lie to  
1550 these politicians who have been telling us for more than two  
1551 years that they held in their hands irrefutable evidence of  
1552 coordination between the Russian government and the Trump  
1553 campaign. I want to know all aspects of this lie and who was  
1554 responsible for using it to tear this country apart and to  
1555 interfere with the legitimate election of the President.

1556 What I do not want to do is illegally release material  
1557 in that report that is related to ongoing investigations into

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1558 political corruption at the highest levels of the FBI and the  
1559 Justice Department.

1560       It is clear that high-ranking officials entrusted with  
1561 the law enforcement powers of our country abused this trust  
1562 to influence the 2016 presidential election and ultimately to  
1563 undermine its outcome. It is inconceivable that the Mueller  
1564 investigation did not look into the fake Steele dossier that  
1565 was the source of these outlandish charges and that was  
1566 knowingly invoked by these officials in their attempt to  
1567 delegitimize the constitutional right of the American people  
1568 to elect their president.

1569       The premature release of such information while the  
1570 Inspector General is conducting investigations into this  
1571 matter, and while future prosecutions of these officials is  
1572 possible, would itself be a deliberate and calculated attempt  
1573 to obstruct justice by this committee, and I am opposed to  
1574 the motion.

1575       Chairman Nadler. The question occurs on the amendment  
1576 in the nature of a substitute.

1577       All those in favor, respond by saying aye.

1578       Opposed, no?

1579       In the opinion of the Chair, the ayes have it, and the  
1580 amendment in the nature of a substitute is agreed to.

1581       A reporting quorum being present, the question is on the  
1582 motion to agree to the resolution as amended.

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1583 Those in favor, respond by saying aye.  
1584 Those opposed?  
1585 The ayes have it. The resolution --  
1586 Mr. Collins. Roll call.  
1587 Chairman Nadler. A recorded vote has been requested,  
1588 and the Clerk will call the roll.  
1589 Ms. Strasser. Mr. Nadler?  
1590 Chairman Nadler. Aye.  
1591 Ms. Strasser. Mr. Nadler votes aye.  
1592 Ms. Lofgren?  
1593 Ms. Lofgren. Aye.  
1594 Ms. Strasser. Ms. Lofgren votes aye.  
1595 Ms. Jackson Lee?  
1596 Mr. Cohen?  
1597 Mr. Cohen. Aye.  
1598 Ms. Strasser. Mr. Cohen votes aye.  
1599 Mr. Johnson of Georgia?  
1600 Mr. Johnson of Georgia. Aye.  
1601 Ms. Strasser. Mr. Johnson of Georgia votes aye.  
1602 Mr. Deutch?  
1603 Mr. Deutch. Aye.  
1604 Ms. Strasser. Mr. Deutch votes aye.  
1605 Ms. Bass?  
1606 Mr. Richmond?  
1607 Mr. Richmond. Aye.

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1608 Ms. Strasser. Mr. Richmond votes aye.

1609 Mr. Jeffries?

1610 Mr. Jeffries. Aye.

1611 Ms. Strasser. Mr. Jeffries votes aye.

1612 Mr. Cicilline?

1613 Mr. Cicilline. Aye.

1614 Ms. Strasser. Mr. Cicilline votes aye.

1615 Mr. Swalwell?

1616 Mr. Swalwell. Aye.

1617 Ms. Strasser. Mr. Swalwell votes aye.

1618 Mr. Lieu?

1619 Mr. Lieu. Aye.

1620 Ms. Strasser. Mr. Lieu votes aye.

1621 Mr. Raskin?

1622 Mr. Raskin. Aye.

1623 Ms. Strasser. Mr. Raskin votes aye.

1624 Ms. Jayapal?

1625 Ms. Jayapal. Aye.

1626 Ms. Strasser. Ms. Jayapal votes aye.

1627 Mrs. Demings?

1628 Mrs. Demings. Aye.

1629 Ms. Strasser. Mrs. Demings votes aye.

1630 Mr. Correa?

1631 Mr. Correa. Aye.

1632 Ms. Strasser. Mr. Correa votes aye.



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1633 Ms. Scanlon?

1634 Ms. Scanlon. Aye.

1635 Ms. Strasser. Ms. Scanlon votes aye.

1636 Ms. Garcia?

1637 Ms. Garcia. Aye.

1638 Ms. Strasser. Ms. Garcia votes aye.

1639 Mr. Neguse?

1640 Mr. Neguse. Aye.

1641 Ms. Strasser. Mr. Neguse votes aye.

1642 Mrs. McBath?

1643 Mrs. McBath. Aye.

1644 Ms. Strasser. Mrs. McBath votes aye.

1645 Mr. Stanton?

1646 Mr. Stanton. Aye.

1647 Ms. Strasser. Mr. Stanton votes aye.

1648 Ms. Dean?

1649 Ms. Dean. Aye.

1650 Ms. Strasser. Ms. Dean votes aye.

1651 Ms. Mucarsel-Powell?

1652 Ms. Mucarsel-Powell. Aye.

1653 Ms. Strasser. Ms. Mucarsel-Powell votes aye.

1654 Ms. Escobar?

1655 Ms. Escobar. Aye.

1656 Ms. Strasser. Ms. Escobar votes aye.

1657 Mr. Collins?

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1658 Ms. Bass?

1659 Ms. Bass. Aye.

1660 Ms. Strasser. Ms. Bass votes aye.

1661 Mr. Collins. No.

1662 Ms. Strasser. Mr. Collins votes no.

1663 Mr. Sensenbrenner?

1664 Mr. Sensenbrenner. No.

1665 Ms. Strasser. Mr. Sensenbrenner votes no.

1666 Mr. Chabot?

1667 Mr. Chabot. No.

1668 Ms. Strasser. Mr. Chabot votes no.

1669 Mr. Gohmert?

1670 Mr. Gohmert. No.

1671 Ms. Strasser. Mr. Gohmert votes no.

1672 Mr. Jordan?

1673 Mr. Jordan. No.

1674 Ms. Strasser. Mr. Jordan votes no.

1675 Mr. Buck?

1676 Mr. Buck. No.

1677 Ms. Strasser. Mr. Buck votes no.

1678 Mr. Ratcliffe?

1679 Mrs. Roby?

1680 Mrs. Roby. No.

1681 Ms. Strasser. Mrs. Roby votes no.

1682 Mr. Gaetz?

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1683 Mr. Gaetz. No.

1684 Ms. Strasser. Mr. Gaetz votes no.

1685 Mr. Johnson of Louisiana?

1686 Mr. Johnson of Louisiana. No.

1687 Ms. Strasser. Mr. Johnson of Louisiana votes no.

1688 Mr. Biggs?

1689 Mr. Biggs. No.

1690 Ms. Strasser. Mr. Biggs votes no.

1691 Mr. McClintock?

1692 Mr. McClintock. No.

1693 Ms. Strasser. Mr. McClintock votes no.

1694 Mrs. Lesko?

1695 Mrs. Lesko. No.

1696 Ms. Strasser. Mrs. Lesko votes no.

1697 Mr. Reschenthaler?

1698 Mr. Reschenthaler. No.

1699 Ms. Strasser. Mr. Reschenthaler votes no.

1700 Mr. Cline?

1701 Mr. Cline. No.

1702 Ms. Strasser. Mr. Cline votes no.

1703 Mr. Armstrong?

1704 Mr. Armstrong. No.

1705 Ms. Strasser. Mr. Armstrong votes no.

1706 Mr. Steube?

1707 Mr. Steube. No.

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1708 Ms. Strasser. Mr. Steube votes no.

1709 Chairman Nadler. Has every member voted who wishes to  
1710 vote?

1711 Ms. Jackson Lee. Mr. Chairman, how am I recorded?

1712 Ms. Strasser. Ms. Jackson Lee, you are not recorded.

1713 Ms. Jackson Lee. Aye.

1714 Ms. Strasser. Ms. Jackson Lee votes aye.

1715 Chairman Nadler. The gentleman from Texas?

1716 Ms. Strasser. Mr. Ratcliffe votes no.

1717 Chairman Nadler. Does any other member wish to vote who  
1718 has not voted?

1719 The Clerk will report.

1720 Ms. Strasser. Mr. Chairman, the vote is 24 ayes, 17  
1721 noes.

1722 Chairman Nadler. The ayes have it. The resolution is  
1723 amended as agreed to.

1724 This concludes our business for today. Thanks to all of  
1725 our members for attending.

1726 The mark-up is adjourned.

1727 [Whereupon, at 10:25 a.m., the hearing was adjourned.]

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit U**

## SUBPOENA

### BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To Donald F. McGahn II

You are hereby commanded to be and appear before the  
Committee on the Judiciary

of the House of Representatives of the United States at the place, date, and time specified below.

- ☒ **to produce the things identified on the attached schedule** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: 2138 Rayburn House Office Building, Washington, D.C., 20515

Date: May 7, 2019

Time: 10:00am

- ☐ **to testify at a deposition** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: \_\_\_\_\_

Date: \_\_\_\_\_ (and continuing until completed)

Time: \_\_\_\_\_

- ☒ **to testify at a hearing** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: 2141 Rayburn House Office Building, Washington, D.C., 20515

Date: May 21, 2019

Time: 10:00am

To any authorized staff member or the U.S. Marshals Service

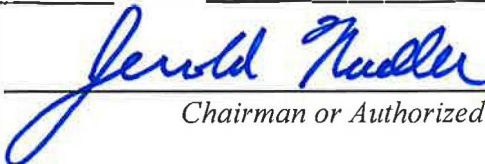
\_\_\_\_\_ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at

the city of Washington, D.C. this 22 day of April, 2019.

Attest:

  
Clerk

  
Chairman or Authorized Member

## **PROOF OF SERVICE**

---

Subpoena for

Donald F. McGahn II

Address c/o William A. Burck, Esq., Quinn, Emanuel, Urquhart, & Sullivan, LLP

1300 I Street NW, Suite 900, Washington, DC, 20005

before the Committee on the Judiciary

*U.S. House of Representatives*  
*116th Congress*


---

Served by (print name) Aaron Hiller

Title Deputy Chief Counsel, House Judiciary Committee

Manner of service Electronic

Date April 22, 2019

Signature of Server 

Address 2138 Rayburn House Office Building

Washington, D.C. 20515

**SCHEDULE**

In accordance with the attached Definitions and Instructions, you are hereby required to produce all documents and communications in your possession, custody or control referring or relating to:

1. Statements by Michael Flynn to the Federal Bureau of Investigation regarding contacts with Sergey Kislyak.
2. The Federal Bureau of Investigation and Department of Justice's investigation of Michael Flynn.
3. Meetings with Department of Justice officials or employees relating to Michael Flynn and underlying evidence relating to Michael Flynn.
4. The resignation or termination of Michael Flynn.
5. Sean Spicer's February 14, 2017 public statements about Michael Flynn's resignation.
6. President Trump's contacts with James Comey on or about January 27, 2017, February 14, 2017, March 30, 2017, and April 11, 2017.
7. The termination of James Comey, including but not limited to any documents or communications relating to draft termination letters, White House Counsel memoranda, or the May 9, 2017 Rod Rosenstein memorandum to Jeff Sessions entitled "Restoring Public Confidence in the FBI."
8. Meetings or communications involving Federal Bureau of Investigation or Department of Justice officials or employees relating to the resignation or termination of James Comey.
9. Jeff Sessions's recusal from any matters arising from the campaigns for President of the United States.
10. Reversing or attempting to reverse Jeff Sessions's recusal from any matters.
11. The resignation or termination, whether contemplated or actual, of Jeff Sessions.
12. The resignation or termination, whether contemplated or actual, of Rod Rosenstein.
13. The resignation or termination, whether contemplated or actual, of Special Counsel Robert Mueller.
14. Your resignation or termination, whether contemplated or actual.
15. The appointment of Special Counsel Robert Mueller.
16. Alleged conflicts of interest on the part of Special Counsel Robert Mueller or other employees of the Special Counsel's Office.
17. Public statements and/or requests to correct the record or deny reports that President Trump asked for Special Counsel Robert Mueller to be removed as Special Counsel.



18. Memoranda directing White House officials or employees to avoid direct contact or communication with the Department of Justice or Jeff Sessions.
19. Meetings or communications with Dana Boente or other Department of Justice officials or employees relating to whether the President was being investigated by the Department of Justice or Federal Bureau of Investigation.
20. Meetings or communications with Department of Justice officials or employees relating to James Comey's testimony before Congress.
21. The President maintaining possession of Jeff Sessions's resignation letter.
22. Communications about Special Counsel Mueller's investigation, including but not limited to whether any action taken, proposed or discussed by President Trump or anyone acting on his behalf may constitute obstruction of justice or any violation of law.
23. President Trump's exposure in the Special Counsel Investigation relating to "other contacts," "calls," or "ask re Flynn" as mentioned in Volume II, page 82 of the Report.
24. Statements or communications relating to press reports that President Trump was under investigation.
25. Paul Manafort's cooperation with the Special Counsel's Office.
26. The June 9, 2016 Trump Tower meeting.
27. The July 8, 2017 statement and related statements released in the name of Donald Trump Jr. regarding the Trump Tower meeting.
28. Prosecuting or investigating James Comey or Hillary Clinton.
29. Presidential pardons, whether possible or actual, for Paul Manafort, Michael Flynn, Michael Cohen, Rick Gates, Roger Stone, individuals associated with the Trump Campaign, or individuals involved in matters before the U.S. Attorney's Office for the Southern District of New York.
30. Selecting Jeff Sessions's replacement through a recess appointment or appointing an Acting Attorney General under the Federal Vacancies Reform Act.
31. The SDNY Investigations, the recusal of U.S. Attorney Geoffrey Berman from the SDNY Investigations, or the reassignment or potential reassignment of SDNY employees from the SDNY Investigations.
32. Statements by Michael Cohen or White House officials to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence regarding the timing of the Trump Organization's efforts to develop a property in Moscow, including but not limited to drafts of such statements and communications about such drafts or final statements.

33. Any payment, or potential payment, to any person or entity by Michael Cohen, Essential Consultants LLC, or American Media Inc. ("AMI") for the benefit of Donald Trump or the Trump Campaign, including but not limited to any documents relating to the reimbursement of Cohen, Essential Consultants LLC, or AMI for any such payments, and any documents relating to the omission or inclusion of information about liabilities associated with such payments on Donald Trump's Public Financial Disclosure Reports (OGE Form 278e) filed in 2017 and 2018.
34. Communications relating to United States imposed sanctions or potential sanctions against the Russian Federation from June 16, 2015 to October 18, 2018, including but not limited to the sanctions imposed pursuant to the Magnitsky Act.
35. Communications with the Executive Office of the President regarding your response to the March 4, 2019 document request by the House Committee on the Judiciary.
36. Any documents referenced in the Report.

## DEFINITIONS

As used in this subpoena, the following terms shall be interpreted in accordance with these definitions:

1. “58<sup>th</sup> Presidential Inaugural Committee” means the entity registered under FEC ID # C00629584 as well as its parent companies, subsidiary companies, affiliated entities, agents, officials, and instrumentalities.
2. “And,” and “or,” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
3. “Any” includes “all,” and “all” includes “any.”
4. “Communication(s)” means the transmittal of information by any means, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic message including email, text message, instant message, MMS or SMS message, encrypted message, message application, social media, or otherwise.
5. “Employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
6. “Document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, call records, electronic mail (“e-mail”), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term “document” includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto.
7. “Documents in your possession, custody or control” means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party. **This includes but is not limited to documents that are or were held by your attorneys.**
8. “Each” shall be construed to include “every,” and “every” shall be construed to include “each.”

9. "Government" shall include any government's present and former agencies, branches, units, divisions, subdivisions, districts, public corporations, employees, elected and appointed officials, ambassadors, diplomats, emissaries, authorities, agents, assignees, and instrumentalities. This includes, but is not limited to, any government-controlled business entities, entities in which the government has a financial interest, and any person acting or purporting to act on the government's behalf.
10. "Including" shall be construed broadly to mean "including, but not limited to."
11. "Person" or "persons" means natural persons, firms, partnerships, associations, corporations, subsidiaries, division, departments, joint ventures proprietorships, syndicates, or other legal business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units, thereof.
12. "Referenced" means cited, quoted, mentioned, described, alluded to, contained, incorporated, reproduced, or identified in any manner whatsoever.
13. "Relating to" shall mean discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting, evidencing, constituting, comprising, showing, setting forth, considering, recommending, concerning, or pertinent to that subject in any manner whatsoever.
14. "The Russian Federation" shall include the Government of the Russian Federation, as the term "Government" is defined above.
15. "Special Counsel's Office" means the office created pursuant to Department of Justice Order No. 3915-17 issued by the Acting Attorney General on May 17, 2017 appointing Robert S. Mueller III as Special Counsel, and its employees.
16. "Special Counsel's Investigation" means the investigation conducted by the Special Counsel's Office pursuant to Department of Justice Order No. 3915-17 issued by the Acting Attorney General on May 17, 2017.
17. "SDNY Investigations" shall include any investigation or prosecution conducted by the U.S. Attorney's Office for the Southern District of New York relating to: (i) Michael Cohen; (ii) the Trump Organization; (iii) the Trump Campaign; and (iv) the 58<sup>th</sup> Presidential Inaugural Committee.
18. "The Report" means the complete and unredacted version of the report submitted on or about March 22, 2019 by Special Counsel Robert Mueller, pursuant to his authority under 28 C.F.R. § 600.8(c), entitled, "Report on the Investigation into Russian Interference in the 2016 Presidential Election."
19. "Trump Campaign" for purposes of this subpoena shall include Donald J. Trump for President, Inc., as well as its parent companies, subsidiary companies, affiliated entities, agents, officials, and instrumentalities.

20. The “Trump Organization” for purposes of this subpoena shall include the Trump Organization, Inc., The Trump Organization LLC, and their parent companies, subsidiary companies, affiliated entities, agents, officials, and instrumentalities.
21. The “Trump Tower Meeting” for purposes of this subpoena shall reference the June 9, 2016 Trump Tower meeting attended by the following Donald Trump Jr., Paul Manafort, Kushner, Natalia Veselnitskaya, Rob Goldstone, and Rinat Akhmetshin.

### **INSTRUCTIONS**

1. In complying with this subpoena, you should produce all responsive documents in unredacted form that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you. If a document is referenced in the Report in part, you should produce it in full in a complete and unredacted form.
2. Documents responsive to the subpoena should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that a document is withheld in full or in part on any basis, including a claim of privilege, you should provide a log containing the following information concerning every such document: (i) the reason the document is not being produced; (ii) the type of document; (iii) the general subject matter; (iv) the date, author, addressee, and any other recipient(s); (v) the relationship of the author and addressee to each other; and (vi) any other description necessary to identify the document and to explain the basis for not producing the document. If a claimed privilege applies to only a portion of any document, that portion only should be withheld and the remainder of the document should be produced. As used herein, "claim of privilege" includes, but is not limited to, any claim that a document either may or must be withheld from production pursuant to any law, statute, rule, policy or regulation.
4. In the event that a document is withheld in full or in part on the basis of a privilege asserted by or on behalf of the White House, or at the request of the White House, please also include the following information in your privilege log:
  - a. The date on which you or any attorney representing you received the document or any copy thereof from the White House, received access to that document from the White House, or removed that document or any copy thereof from the White House;
  - b. The name of the person or persons who provided the document to you or your attorney;
  - c. The name of any lawyer or other agent or third party outside the White House who, to your knowledge, reviewed the document.
  - d. You should log each responsive document as to which you have directed us to the White House, and each document that was previously in your attorneys' possession, custody or control.
5. Any objections or claims of privilege are waived if you fail to provide an explanation of why full compliance is not possible and a log identifying with specificity the ground(s) for withholding each withheld document prior to the request compliance date.
6. In complying with the request, be apprised that (unless otherwise determined by the Committee) the Committee does not recognize: any purported non-disclosure privileges associated with the common law including, but not limited to the deliberative-process privilege, the attorney-client privilege, and attorney work product protections; any purported privileges or protections from disclosure under the Freedom of Information Act; or any purported contractual privileges, such as non-disclosure agreements.

7. Any assertion of any such non-constitutional legal bases for withholding documents or other materials, shall be of no legal force and effect and shall not provide a justification for such withholding or refusal, unless and only to the extent that the Committee has consented to recognize the assertion as valid.
8. Pursuant to 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
9. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
10. If any document responsive to this subpoena was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this subpoena, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party, including, but not limited to (a) how the document was disposed of; (b) the name, current address, and telephone number of the person who currently has possession, custody, or control over the document; (c) the date of disposition; and (d) the name, current address, and telephone number of each person who authorized said disposition or who had or has knowledge of said disposition.
11. If any document responsive to this subpoena cannot be located, describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction or unavailability.
12. In the event that any entity, organization, or individual named in the subpoena has been, or is currently, known by any other name, the subpoena should be read also to include such other names under that alternative identification.
13. All documents should be produced with Bates numbers affixed. The Bates numbers must be unique, sequential, fixed-length numbers and must begin with a prefix referencing the name of the producing party (e.g., ABCD-000001). This format must remain consistent across all productions. The number of digits in the numeric portion of the format should not change in subsequent productions, nor should spaces, hyphens, or other separators be added or deleted. All documents should be Bates-stamped sequentially and produced sequentially.
14. Documents produced pursuant to this subpoena should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this subpoena should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this subpoena was issued. Indicate the office or division and person from whose files each document was produced.
15. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.

16. Produce electronic documents as created or stored electronically in their original electronic format. Documents produced in electronic format should be organized, identified, and indexed electronically, in a manner comparable to the organization structure called for in Instruction 13 above.
17. Data may be produced on CD, DVD, memory stick, USB thumb drive, hard drive, or via secure file transfer, using the media requiring the least number of deliverables. Label all media with the following:
  - a. Production date;
  - b. Bates range;
  - c. Disk number (1 of X), as applicable.
18. If a date or other descriptive detail set forth in this subpoena referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the subpoena, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
19. The subpoena is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. Production sets shall be delivered to the Majority Staff in Room 2138 of the Rayburn House Office Building and the Minority Staff in Room 2142 of the Rayburn House Office Building. You should consult with Committee Majority Staff regarding the method of delivery prior to sending any materials.
21. If compliance with the subpoena cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production. In the event that any responsive documents or other materials contain classified information, please immediately contact Committee staff to discuss how to proceed.
22. Upon completion of the document production, please submit a written certification, signed by you or by counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the subpoena have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's subpoena or in anticipation of receiving the Committee's subpoena, and (3) all documents identified during the search that are responsive have been produced to the Committee, identified in a log provided to the Committee, or otherwise identified as provided herein.
23. A cover letter should be included with each production including the following information:



- a. List of each piece of media (hard drive, thumb drive, DVD or CD) included in the production by the unique number assigned to it, and readily apparent on the physical media;
- b. List of fields in the order in which they are listed in the metadata load file;
- c. The paragraph(s) and/or clause(s) in the Committee's subpoena to which each document responds;
- d. Time zone in which emails were standardized during conversion (email collections only);
- e. Total page count and bates range for the entire production, including both hard copy and electronic documents.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit V**

THE WHITE HOUSE

WASHINGTON

May 15, 2019

The Honorable Jerrold Nadler  
Chairman  
Committee on the Judiciary  
United States House of Representatives  
Washington, D.C. 20515

Dear Chairman Nadler:

I write in response to your letter of March 4, 2019. As I have previously stated, we will work in good faith to accommodate Congress's legitimate requests for information while at the same time respecting the separation of powers and the constitutional prerogatives of the President. Our approach is guided by long-standing precedent and a desire to seek accommodation and cooperation where possible, consistent with mutual respect for the constitutional roles of each branch of government.

Since the 116th Congress convened on January 3, 2019, this Administration has gone to great lengths to respond to congressional information requests. Indeed, in under five months, the Administration has provided hundreds of responses to congressional requests and produced tens of thousands of pages of documents to Congress. Administration officials have testified at congressional hearings well over 100 times, and they have provided hundreds of briefings to congressional committees and individual members of the House and Senate. Your recent assertion that the Administration is acting in "blanket defiance of Congress's constitutionally mandated duties" is demonstrably false. Statement of Chairman Jerrold Nadler (May 7, 2019). Similarly, your claim that "virtually all document requests are going unsatisfied" is contradicted by the facts. Statement of Chairman Jerrold Nadler (May 8, 2019).

The Administration's significant efforts to accommodate Congress's information requests extend to the House Committee on the Judiciary's current investigation. As you know, the Special Counsel's Office recently concluded its investigation into the subjects discussed in your March 4 letter. By any measure, the investigation was exhaustive. Indeed, the evidence considered by the Special Counsel's Office was derived from approximately 2,800 subpoenas, 500 executed search warrants, 230 orders for communication records, and 500 witness interviews. Report of Special Counsel Robert S. Mueller, III, Vol. I at 13 (Mar. 2019); Letter from William P. Barr, Attorney General, to Chairman Lindsey Graham, Chairman Jerrold Nadler, Ranking Member Dianne Feinstein, and Ranking Member Doug Collins 1 (Mar. 24, 2019) (hereinafter Mar. 24, 2019 Barr Letter). Media reports indicate that the Special Counsel's investigation could cost taxpayers "up to \$35 million." John Haltiwanger, *The Mueller investigation could cost up to \$35 million once all the expense reports are in*, Business Insider (Mar. 25, 2019).

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On April 18, 2019, the Attorney General went well beyond what is required by law and made the Special Counsel's report available to Congress and the public with minimal redactions. This was an extraordinary accommodation in light of long-standing Department of Justice policies regarding the confidentiality of investigations that do not result in prosecution. The report powerfully demonstrates that the Special Counsel found no evidence that any Americans—including any member of the President's campaign—conspired or coordinated with Russia to interfere with the 2016 election. The Attorney General and then-Deputy Attorney General also "concluded that the evidence developed by the Special Counsel is not sufficient to establish that the President committed an obstruction-of-justice offense." Remarks of Attorney General William P. Barr (Apr. 18, 2019); *see also* Mar. 24, 2019 Barr Letter at 3.

In the interest of transparency, the President did not assert executive privilege over any part of the Special Counsel's report released on April 18, 2019, even though—as the Attorney General correctly stated—"he would have been well within his rights to do so." Remarks of Attorney General William P. Barr (Apr. 18, 2019); *see also* Letter from Emmet T. Flood, Special Counsel to the President, to William P. Barr, Attorney General 3-4 (Apr. 19, 2019) (hereinafter Flood Letter) (the President's decision not to assert executive privilege over any of the presumptively privileged portions of the Special Counsel's report "is not a waiver of executive privilege for any other material or for any other purpose"). Accordingly, the only redactions in the report were made by the Department of Justice (with the assistance of the Special Counsel's Office and the intelligence community) to protect sensitive information that is safeguarded by law, court orders, or long-standing Department of Justice policy regarding open investigations. Remarks of Attorney General William P. Barr (Apr. 18, 2019).

Moreover, the Attorney General indicated that he would "make available to a bipartisan group of leaders from several Congressional committees a version of the report with all redactions removed except those relating to grand-jury information," which the Department of Justice is prohibited by law from disclosing under Rule 6(e) of the Federal Rules of Criminal Procedure. *Id.* (explaining that "these members of Congress will be able to see all of the redacted material for themselves—with the limited exception of that which, by law, cannot be shared"). He also offered to testify voluntarily at a public hearing and to answer questions from all members of the Committee. You refused even to review the less redacted version of the report before declaring that it was inadequate, and you rejected the Attorney General's offer to testify unless he agreed to unprecedented conditions. Instead, you issued a subpoena to the Attorney General demanding not only the "complete and unredacted report," but also "[a]ll documents referenced in the Report" and "[a]ll documents obtained and investigation materials created by the Special Counsel's Office." Subpoena to William P. Barr, Attorney General (Apr. 18, 2019). Thus, the subpoena's plain language covers grand-jury information that the Committee knows the Attorney General cannot provide without violating the law. *See id.*

Even though the Committee had rebuffed a good faith offer to accommodate Congress's interests by disclosing the entire report—except for grand-jury information—to congressional leadership, the Department of Justice proposed further accommodations, including offers "to expand the number of staff members who may review the minimally redacted report; to allow Members of Congress who have reviewed the minimally redacted report to discuss the material freely among themselves; and to allow Members to take and retain their notes following their

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review.” Letter from Stephen E. Boyd, Assistant Attorney General, to Chairman Jerrold Nadler 1 (May 7, 2019). The Committee summarily rejected these additional accommodations, abruptly terminated ongoing negotiations, and prematurely voted to recommend that the Attorney General be held in contempt of Congress—a mere *19 days* after the Committee served its subpoena on the Attorney General. *Id.*; Letter from Stephen E. Boyd, Assistant Attorney General, to Chairman Jerrold Nadler 1 (May 8, 2019).

In other words, the Committee rushed to vote on contempt for failing to provide 100% and immediate compliance with a subpoena that seeks *millions of pages* of documents from a prosecutor’s files. Moreover, the Committee—for the first time in American history—has voted to recommend that the Attorney General be held in contempt because he *refused to violate the law* by turning over grand-jury materials that he may not lawfully disclose. The Committee took these drastic actions in under three weeks without making any reasonable attempt to engage in the constitutionally mandated accommodation process to narrow its requests.

Lost in the Committee’s legally indefensible rush to recommend a contempt citation is the reality that the Committee has not articulated any proper legislative purpose for pursuing inquiries that duplicate matters that were the subject of the Special Counsel’s inquiry. Congressional investigations are intended to obtain information to aid in evaluating potential legislation, not to harass political opponents or to pursue an unauthorized “do-over” of exhaustive law enforcement investigations conducted by the Department of Justice.

Under the circumstances, the appropriate course is for the Committee to discontinue the inquiry discussed in the March 4 letter. Unfortunately, it appears that you have already decided to press ahead with a duplicative investigation, including by issuing subpoenas, to replot the same ground the Special Counsel has already covered. I ask that you reconsider that approach. With the Special Counsel’s investigation behind us, the President and his team stand ready to work with the Committee cooperatively to advance a legislative agenda for the benefit of the American people.

If the Committee continues to pursue its inquiry, the requests in the Committee’s March 4 letter suffer from numerous legal defects and reflect little, if any, respect for the legitimate interests of the Executive Branch or for the accommodation process that governs congressional requests for information from the Executive. The Executive Branch interests at stake are not new and have been uniformly recognized and respected by the President’s predecessors—from President Washington to President Obama. The principal legal flaws in the Committee’s requests are summarized here and discussed in greater detail below.

- *First*, the letter implicates all four components of executive privilege, seeking core Executive Branch communications that are not subject to disclosure under settled legal principles. This includes (i) confidential communications between the President and his advisors; (ii) confidential deliberations among Executive Branch officials; (iii) information relating to law enforcement investigations; and (iv) confidential communications between the President and foreign leaders. The President’s decision to cooperate with the Special Counsel’s investigation and not to assert executive privilege over any of the presumptively privileged portions of the Special Counsel’s report, as released on April 18, 2019, “is not

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a waiver of executive privilege for any other material or for any other purpose.” Flood Letter at 3-4.

- *Second*, the letter requests information about functions that the Constitution assigns exclusively to the Executive, which are traditionally deemed beyond the reach of congressional oversight.
- *Third*, it appears that the Committee’s inquiry is designed, not to further a legitimate legislative purpose, but rather to conduct a pseudo law enforcement investigation on matters that were already the subject of the Special Counsel’s long-running investigation and are outside the constitutional authority of the legislative branch. The only purpose for this duplication seems to be harassing and seeking to embarrass political opponents after an exhaustive two-year investigation by the Department of Justice did not reach the conclusion that some members of the Committee apparently would have preferred. That, of course, is not a permissible purpose for demanding confidential information from the Executive.
- *Finally*, when the requests are evaluated in light of these cumulative defects showing no regard for the legitimate interests of the Executive Branch—combined with the sweeping scope of the requests—it becomes apparent that they bear no relation to any articulated goal of legitimate congressional oversight. Instead, they amount to little more than an unprecedented effort to interfere with the President’s ability to perform his constitutional duties. As a result, the requests raise serious concerns of violating the separation of powers enshrined in the Constitution.

As I have repeatedly made clear, we respect the authority of Congress to make legitimate requests for information to aid it in the task of legislating and will work with the Committee through the constitutionally mandated accommodation process to provide the Committee with information it can properly seek. It would greatly advance the first step in that process if the Committee were to narrow the sweeping scope of the requests in the letter and articulate the legislative purpose and legal support for each of the disparate requests it wishes to pursue, including by addressing each of the legal deficiencies that I raise in this letter.

Finally, I reiterate my concern that the Committee has sent letters directly to current and former White House officials, including several individuals who served in the Office of the White House Counsel. As I have consistently emphasized in my correspondence with other committees, any contact with current or former White House officials should be through the Office of the White House Counsel, so that we may ensure appropriate accommodation of the Committee’s informational needs while protecting the important constitutional interests of the Executive. As a matter of basic courtesy and respect for a co-equal branch of our government, I request that you direct your staff to work through my office to request information from current or former White House officials. Prior administrations have made the same request. *See, e.g.*, Letter from Kathryn H. Ruemmler, Counsel to President Obama, to Chairman Fred Upton, Chairman Cliff Stearns, Chairman Joseph R. Pitts, and Vice Chairman Michael C. Burgess, M.D. (Nov. 14, 2011) (“[A]ny requests from Committee or Committee staff to speak with current or former White House officials about their official responsibilities at the White House should be directed to the Office of the White

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House Counsel.”). Consulting with my office will ensure that the Committee efficiently obtains access to the information and individuals to which it is entitled and that any disclosure of privileged information to Congress is properly authorized.

**I. The Committee’s Requests Unreasonably Target Matters at the Core of Well-Settled Executive Branch Confidentiality Interests.**

It has long been recognized that robust confidentiality protections are essential for the proper functioning of the Executive Branch. Those protections are firmly rooted in the Constitution and can be overcome by Congress, if at all, only in limited circumstances. *See Senate Select Comm. on Presidential Campaign Activities v. Nixon*, 498 F.2d 725, 731 (D.C. Cir. 1974) (en banc) (requiring a showing that confidential Executive Branch documents are “demonstrably critical to the responsible fulfillment of the Committee’s functions”). The importance of defending this constitutionally based protection for the Executive Branch has been consistently recognized by administrations of both political parties. For example, in response to congressional requests for documents, the Obama Administration strenuously argued that, “[a]s courts have long recognized, the Executive Branch’s role in enforcing the law requires that some materials remain confidential so that the Executive’s proper functioning under the Constitution is preserved and protected.” Mem. in Supp. of Def.’s Mot. for Summ. J. 14, *Comm. on Oversight & Gov’t Reform v. Holder*, No. 12-cv-1332, 2014 WL 12662665 (D.D.C. Aug. 20, 2014); *see also* Letter from W. Neil Eggleston, Counsel to President Obama, to Chairman Darrell E. Issa (July 15, 2014) (highlighting the need to “preserv[e] the President’s independence and autonomy, as well as his ability to obtain candid advice and counsel to aid him in the discharge of his constitutional duties”). As the Obama Administration rightly explained—contrary to the assertions in your March 4 letter—even “a claim of ‘misconduct’ does not invalidate” these protections. Mem. in Supp. of Def.’s Mot. for Summ. J. 36, *Comm. on Oversight & Gov’t Reform*, 2014 WL 12662665; *see also Senate Select Comm.*, 498 F.2d at 732-33. These rules apply regardless of who occupies the Oval Office or controls the majority in the House or Senate.

Despite bipartisan recognition of the Executive Branch’s need to maintain confidentiality with regard to certain kinds of communications, the Committee’s requests target four categories of Executive Branch information that are plainly protected from disclosure to Congress. I address each category in turn here and request that the Committee clarify what information it is actually seeking and the justification for pursuing such information. A clear statement of the Committee’s needs will enable us to explore developing an appropriate accommodation.

*First*, many of the requests in the letter expressly seek documents involving communications between the President and his most senior advisors. For instance, Request 1(a) seeks communications between the President and the Counsel to the President; Request 1(d) seeks communications involving the President, Vice President, White House Chief of Staff, and other senior advisors to the President; and Request 1(i) seeks communications between the President and the Acting Attorney General. The President has a constitutionally grounded interest in being able to consult with his advisors in a confidential manner. *See Immunity of the Assistant to the President and Director of the Office of Political Strategy and Outreach From Congressional Subpoena*, 38 Op. O.L.C. \_\_\_, at \*6 (July 15, 2014) (“[S]ubjecting an immediate presidential adviser to Congress’s subpoena power would threaten the President’s autonomy and his ability to

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receive sound and candid advice.”); Letter from W. Neil Eggleston, Counsel to President Obama, to Chairman Jason Chaffetz (May 16, 2016) (noting the importance of the President’s “ability to receive candid advice and counsel in the discharge of his constitutional duties.”).

The courts have limited Congress’s ability to seek disclosure of presidential communications, and for good reason. Informed decisionmaking requires the candid exchange of ideas, and “[h]uman experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decisionmaking process.” *United States v. Nixon*, 418 U.S. 683, 705 (1974). As a result, the Supreme Court has long recognized the Executive’s interest in the confidentiality of decisionmaking as a central component of the constitutional separation of powers:

A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately. . . . The [presidential communications] privilege is fundamental to the operation of Government and inextricably rooted in the separation of powers under the Constitution.

*Id.* at 708. Accordingly, we ask that the Committee articulate the legislative purpose that justifies the Committee’s extraordinary requests seeking disclosure of presidential communications.

*Second*, the Committee requests documents exposing internal predecisional deliberations. For example, numerous requests seek documents reflecting internal discussions concerning the development of public statements, Executive Branch personnel decisions, and the exercise of various Executive powers. *See* Letter Schedule A. But congressional needs generally do not override the Executive Branch’s confidentiality interests with respect to documents that are predecisional and deliberative, even if they do not involve communications with the President. Protections ensuring that the deliberative process can remain confidential apply to the entire Executive Branch and cover documents that reflect “advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated”—precisely the types of documents requested by the Committee. *In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997). This position has been consistently recognized by administrations of both political parties. *See Assertion of Executive Privilege Over Documents Generated in Response to Congressional Investigation into Operation Fast and Furious*, 36 Op. O.L.C. \_\_\_, at \*3 (June 19, 2012) (“The threat of compelled disclosure of confidential Executive Branch deliberative material can discourage robust and candid deliberations . . . .”); *Assertion of Executive Privilege Over Communications Regarding EPA’s Ozone Air Quality Standards and California’s Greenhouse Gas Waiver Request*, 32 Op. O.L.C. 1, 2 (2008) (“Documents generated for the purpose of assisting the President in making a decision are protected” and these protections also “encompass[] Executive Branch deliberative communications that do not implicate presidential decisionmaking”); *Assertion of Executive Privilege Regarding White House Counsel’s Office Documents*, 20 Op. O.L.C. 2, 3 (1996) (“The Supreme Court has expressly (and unanimously) recognized that the Constitution gives the President the power to protect the confidentiality of White House communications.”).



The Honorable Jerrold Nadler  
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*Third*, the Executive Branch has a compelling interest in protecting materials associated with law enforcement investigations. The Committee's requests acknowledge the existence of related law enforcement investigations and expressly seek "documents [the White House] furnished" as part of those investigations. *See* Letter Document Requests. It is well settled that the Executive Branch has authority to withhold from Congress documents from law enforcement files in order "to preserve the integrity and independence of criminal investigations and prosecutions"—including "documents related to a closed criminal investigation." *Assertion of Executive Privilege Concerning the Special Counsel's Interviews of the Vice President and Senior White House Staff*, 32 Op. O.L.C. 7, 10 (2008).

The Committee has no legitimate role in collecting law enforcement materials with the aim of simply duplicating a law enforcement inquiry because it does not like either (i) the conclusions reached by the Department of Justice or (ii) the confidential nature of the investigation, which limits the Committee's ability to access information that is protected from disclosure under existing law. Permitting congressional committees to demand the duplication of information in law enforcement files every time a high-profile and politically charged investigation was underway would irredeemably undermine the integrity and independence of actual law enforcement investigations. *See id.* Mere "exposure" is not a legitimate use of congressional investigative authority. *Watkins v. United States*, 354 U.S. 178, 200 (1957) ("We have no doubt that there is no congressional power to expose for the sake of exposure."). In addition, even after an investigation is completed, congressional access to investigative files raises both "a general concern about the prospect of committees of Congress obtaining confidential records from Justice Department criminal investigative files for the purpose of addressing highly politicized issues in public committee hearings" and, in the current context, a "[m]ore specific[] . . . concern[]" that access would "significantly impair the Department's ability to conduct future law enforcement investigations that would benefit from full White House cooperation." *Special Counsel's Interviews of the Vice President and Senior White House Staff*, 32 Op. O.L.C. at 10-11.

The Committee's demand for materials associated with law enforcement investigations is particularly unwarranted here, where the Committee already has access to the Special Counsel's report, as released on April 18, 2019. Any additional materials are thus not "demonstrably critical" to the Committee's work. *Senate Select Comm.*, 498 F.2d at 731.

*Fourth*, the Committee is seeking documents concerning communications between the President and a foreign leader. *See* Request 4(k). As I recently explained in response to similar requests from other House committees, it is settled law that the Constitution entrusts the conduct of foreign relations exclusively to the Executive Branch, as it makes the President "the sole organ of the federal government in the field of international relations." *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 320 (1936); *see also Chicago & S. Air Lines, Inc. v. Waterman S.S. Corp.*, 333 U.S. 103, 109 (1948) ("The President also possesses in his own right certain powers conferred by the Constitution on him as . . . the Nation's organ in foreign affairs."); Letter from Pat A. Cipollone, Counsel to the President, to Chairman Elijah E. Cummings, Chairman Eliot Engel, and Chairman Adam B. Schiff (Mar. 21, 2019) (same). In keeping with Supreme Court precedent, the Executive Branch has consistently taken the position, across administrations of both political parties, that the President has exclusive authority to conduct diplomacy with foreign nations. *See, e.g., Assertion of Executive Privilege for Documents Concerning Conduct of Foreign*

The Honorable Jerrold Nadler  
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*Affairs with Respect to Haiti*, 20 Op. O.L.C. 5, 7 (1996) (“[T]he conduct of foreign affairs is an exclusive prerogative of the executive branch.”); *Bill to Relocate United States Embassy from Tel Aviv to Jerusalem*, 19 Op. O.L.C. 123, 124 (1995) (“It is well settled that the Constitution vests the President with the exclusive authority to conduct the Nation’s diplomatic relations with other States.”); *Common Legislative Encroachments on Executive Branch Authority*, 13 Op. O.L.C. 248, 256 (1989) (“The President has the responsibility, under the Constitution, to determine the form and manner in which the United States will maintain relations with foreign nations.”).

The President must be free to engage in discussions with foreign leaders without fear that those communications will be disclosed and used as fodder for partisan political purposes. And foreign leaders must be assured of this as well. No foreign leader would engage in private conversations with the President, or the President’s senior advisors, if such conversations were subject to public disclosure (or disclosure to committees of Congress). Indeed, President George Washington made this point when he declined a House committee’s request for copies of documents relating to the negotiation of the Jay Treaty with Great Britain. *See History of Refusals by Executive Branch Officials to Provide Information Demanded by Congress*, 6 Op. O.L.C. 751, 753 (1982) (noting that President Washington sent a letter to Congress stating, “[t]o admit, then, a right in the House of Representatives to demand, and to have, as a matter of course, all the papers respecting a negotiation with a foreign Power, would be to establish a dangerous precedent”). This Administration intends to adhere to the same confidentiality principles that have governed American diplomacy for well over 200 years.

## **II. The Committee Has No Authority to Inquire into the President’s Discharge of Duties Assigned Exclusively to the Executive by the Constitution.**

The Committee’s requests repeatedly run afoul of the Constitution by encroaching upon authorities that the Constitution assigns exclusively to the Executive Branch. These requests have no legitimate legislative purpose and exceed Congress’s limited authority. The Supreme Court explained decades ago that “[s]ince Congress may only investigate into those areas in which it may potentially legislate or appropriate, it cannot inquire into matters which are within the exclusive province of one of the other branches of the Government.” *Barenblatt v. United States*, 360 U.S. 109, 111-12 (1959).

For example, the Committee has announced its intention to investigate “the pardon power.” *See* March 4, 2019 Press Release. But the pardon power is exclusively in the province of the Executive. The power “flows from the Constitution alone, not from any legislative enactments, and . . . it cannot be modified, abridged, or diminished by the Congress.” *Schick v. Reed*, 419 U.S. 256, 266 (1974); *see also Ex parte Garland*, 71 U.S. 333, 380 (1866) (“This power of the President is not subject to legislative control. Congress can neither limit the effect of his pardon, nor exclude from its exercise any class of offenders. The benign prerogative of mercy reposed in him cannot be fettered by any legislative restrictions.”). Thus, Congress’s oversight authority does not extend to the President’s pardon power. *See Assertion of Executive Privilege With Respect to Clemency Decision*, 23 Op. O.L.C. 1, 3-4 (1999) (“[I]t appears that Congress’ oversight authority does not extend to the process employed in connection with a particular clemency decision, to the materials generated or the discussions that took place as part of that process, or to the advice or views the President received in connection with a clemency decision.”).

The Honorable Jerrold Nadler  
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Similarly, the Committee's plan to "investigate" "other presidential authorities," *see* March 4, 2019 Press Release, plainly crosses the line to inquire into functions exclusively assigned to the President, including communications between the President and foreign leaders (e.g., Request 4(k)) and presidential personnel decisions (e.g., Requests 1(b), 1(d), 1(e), 1(f), 1(h)). *See Curtiss-Wright Export Corp.*, 299 U.S. at 320 ("[T]he President [is] the sole organ of the federal government in the field of international relations—a power which does not require as a basis for its exercise an act of Congress."); *Ass'n of Am. Physicians & Surgeons, Inc. v. Clinton*, 997 F.2d 898, 909 (D.C. Cir. 1993) ("Article II . . . gives [the President] the flexibility to organize his advisors and seek advice from them as he wishes."). Because Congress lacks authority in these areas of exclusive presidential authority, there is no legitimate legislative purpose for the Committee's information requests. *See Barenblatt*, 360 U.S. at 111-12.

### **III. The Committee's Efforts to Conduct a Law Enforcement Investigation for the Purpose of Embarrassing, Harassing, or Punishing Political Opponents are Improper.**

As presently framed, the Committee's inquiries transparently amount to little more than an attempt to duplicate—and supplant—law enforcement inquiries, and apparently to do so simply because the *actual* law enforcement investigations conducted by the Department of Justice did not reach a conclusion favored by some members of the Committee. That is not a proper legislative purpose. As you know, the Committee is not a law enforcement agency. Thus, the Committee cannot justify its inquiry simply by asserting that it is searching for possible evidence of its false claims of "obstruction of justice" or—more vaguely—that it is launching an investigation into nonexistent purported "threats against the rule of law." *See* March 4, 2019 Press Release. Pursuing investigations into alleged violations of the criminal code is indisputably a "function[] of the executive and judicial departments of government." *Watkins*, 354 U.S. at 187 (explaining that Congress is not "a law enforcement or trial agency"); *see also Quinn v. United States*, 349 U.S. 155, 161 (1955) (Congress's "power to investigate must not be confused with any of the powers of law enforcement; those powers are assigned under our Constitution to the Executive and the Judiciary"). The Department of Justice—not the Committee on the Judiciary—is the appropriate authority to conduct law enforcement investigations.

Nor can the Committee justify its requests simply by asserting that it intends to *expose* for the sake of exposure. *See* Letter at 1 (pledging to "present our findings to the American people, whatever those findings may be"). The Supreme Court long ago made clear that congressional investigations premised on that purported authority are an abuse of power because "there is no congressional power to expose for the sake of exposure," and there is no "general power to expose where the predominant result can only be an invasion of the private rights of individuals." *Watkins*, 354 U.S. at 200; *see also Quinn*, 349 U.S. at 161 (congressional investigations "cannot be used to inquire into private affairs unrelated to a valid legislative purpose"). As then-Attorney General Eric Holder explained during the Obama Administration, "Congress's legislative function does not imply a freestanding authority to gather information for the sole purpose of informing 'the American people.'" *Congressional Investigation into Operation Fast and Furious*, 36 Op. O.L.C. \_\_\_, at \*7 (internal quotation marks omitted). To the contrary, the "only informing function" of Congress "is that of informing itself about subjects susceptible to legislation, not that of informing

The Honorable Jerrold Nadler  
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the public.” *Id.* (internal quotation marks omitted). Moreover, it is well settled that “[i]nvestigations conducted solely for the personal aggrandizement of the investigators or to ‘punish’ those investigated are indefensible.” *Watkins*, 354 U.S. at 187.

Instead, the Committee’s inquiries must be tied to a valid legislative purpose—that is, they must be tied to evaluating or formulating potential legislation on some subject within the Committee’s authority. As then-Attorney General Holder explained in articulating the Obama Administration’s position, congressional information requests “must be in furtherance of Congress’s legitimate *legislative* responsibilities” because “[c]ongressional oversight of Executive Branch actions is justifiable only as a means of facilitating the legislative task of enacting, amending, or repealing laws.” *Congressional Investigation into Operation Fast and Furious*, 36 Op. O.L.C. \_\_\_, at \*5 (alteration and emphasis in original). And it is critical to the constitutionally mandated accommodation process that the Committee articulate its legislative purpose. Only with that purpose in mind can this office evaluate in good faith the Committee’s need for information, formulate potential accommodations to address the Committee’s need for information, and evaluate, in light of the Executive’s constitutionally based interests in preserving confidentiality, what information is “demonstrably critical to the responsible fulfillment of the Committee’s functions.” *Senate Select Comm.*, 498 F.2d at 731.

In addition, even if the Committee were to attempt to articulate a legitimate legislative purpose for some of its inquiries, the authority of congressional committees to explore in detail any particular case of alleged wrongdoing is limited. In restricting the scope of legitimate congressional oversight, the U.S. Court of Appeals for the District of Columbia Circuit has explained that “legislative judgments normally depend more on the predicted consequences of proposed legislative actions and their political acceptability, than on precise reconstruction of past events.” *Id.* at 732. To the extent the Committee’s current press statements and list of inquiries suggest a probe akin to that undertaken by the Executive Branch, I respectfully submit that they reflect a misunderstanding of the Committee’s legitimate functions. Under settled law, it is not the Committee’s legislative function to conduct a detailed inquiry into a particular event or series of events in order to reconstruct a precise picture of the facts. *Id.* Thus, demands for such detail will rarely be “demonstrably critical to the responsible fulfillment of the Committee’s functions.” *See id.* at 731.

I also find it particularly disturbing that the Committee is not only improperly setting out to duplicate law enforcement investigations when some Committee members disagree with the conclusions of these investigations without articulating any properly defined legislative purpose, but it is doing so having already announced a predetermined conclusion. *See, e.g.*, Interview with Chairman Jerrold Nadler, ABC’s “This Week” (Mar. 3, 2019). In contrast, the Department of Justice reached its conclusions after the Special Counsel exhaustively conducted an investigation for nearly two years. The Attorney General, who previously served as Attorney General and is one of the nation’s most respected lawyers, and the then-Deputy Attorney General, a career public servant who has spent nearly thirty years as a federal prosecutor, reviewed the Special Counsel’s report and made decisions based on the evidence, Department of Justice guidelines, and their collective experience. *See* Remarks of Attorney General William P. Barr (Apr. 18, 2019); Mar. 24, 2019 Barr Letter 1, 3. The White House will not participate in the Committee’s “investigation”

The Honorable Jerrold Nadler  
Page 11

that brushes aside the conclusions of the Department of Justice after a two-year-long effort in favor of political theater pre-ordained to reach a preconceived and false result.

#### **IV. The Committee's Sweeping Document Requests, Unmoored from Any Properly Defined Legislative Purpose, Violate the Separation of Powers.**

Overall, the March 4 letter must be understood in light of the cumulative effect of the numerous defects outlined above. Viewed in that light, the sweeping requests spelled out in the letter in their current form run afoul of the constitutional principle that a co-equal branch of government cannot abuse its role under the Constitution by undertaking actions that amount to “an unwarranted impairment of another branch in the performance of its constitutional duties.” *Cheney v. United States Dist. Court for the Dist. of Columbia*, 542 U.S. 367, 390 (2004); *see also Loving v. United States*, 517 U.S. 748, 757 (1996) (“Even when a branch does not arrogate power to itself, . . . the separation-of-powers doctrine requires that a branch not impair another branch in the performance of its constitutional duties.”); *Scope of Congressional Oversight and Investigative Power With Respect to the Executive Branch*, 9 Op. O.L.C. 60, 62 (1985) (“Congress’ power of inquiry must not be permitted to negate the President’s constitutional responsibility for managing and controlling affairs committed to the Executive Branch.”).

The Supreme Court has applied this broad separation of powers principle to document requests that affect the functioning of the Executive. In *Cheney*, plaintiffs in civil litigation served overly broad discovery requests on a presidential task force chaired by the Vice President. 542 U.S. at 372, 387. The Court held that the defendants were not required to undertake the burden associated with responding to such requests before the requests were properly limited based on separation-of-powers concerns. *Id.* at 388. In reaching its conclusion, the Court noted that “special considerations control when the Executive Branch’s interests in maintaining the autonomy of its office and safeguarding the confidentiality of its communications are implicated.” *Id.* at 385. The Court further noted that “[t]he high respect that is owed to the office of the Chief Executive . . . is a matter that should inform the conduct of the entire proceeding, including the timing and scope of discovery,” and that “the Executive’s constitutional responsibilities and status [are] factors counseling judicial deference and restraint in the conduct of litigation against it.” *Id.* (alteration in original) (internal quotation marks and citations omitted). Accordingly, the Court remanded the case to the U.S. Court of Appeals for the District of Columbia Circuit to determine whether the discovery orders were improper because they constituted an “unwarranted impairment” of the Executive Branch. *Id.* at 390, 392.

Under the principle applied in *Cheney*, the Committee’s sweeping document requests violate the separation of powers. The nearly thirty document requests in the letter (some with multiple subparts) are not only incredibly voluminous, but also breathtaking in scope, covering a sweeping array of events, communications, topics, time periods, and individuals. The Committee’s requests do not come close to reflecting restraint in volume and scope, as required under *Cheney*—particularly when those requests are directed at the President. As outlined above, the requests repeatedly and directly target documents at the core of each of the four recognized components of executive privilege. Based on the sheer number and scope of the Committee’s requests, it is clear that the Committee is trying to unduly burden the Office of the President so as

The Honorable Jerrold Nadler  
Page 12

to impair the President's ability to carry out his constitutional duties. The Constitution does not permit Congress to undermine the President in this manner.

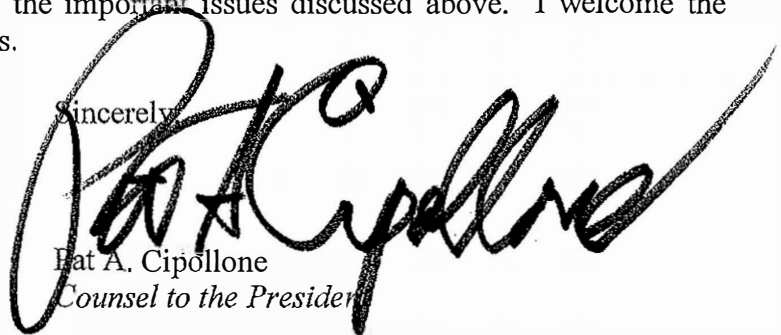
\* \* \*

As the Supreme Court has recognized, "[t]he power of the Congress to conduct investigations is inherent in the legislative process," but this "power of inquiry . . . is not unlimited." *Watkins*, 354 U.S. at 187. Indeed, "[n]o inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the Congress." *Id.* We respect Congress and its authority to seek information to aid it in considering legislation, and we stand ready to work to accommodate all congressional committees that have a legitimate legislative interest in seeking information. We do not believe the investigation discussed in the March 4 letter is a legitimate exercise of oversight authority; particularly now that the Special Counsel's Office of the Department of Justice has completed its work. As discussed, it seeks information that directly implicates core separation of powers and Executive Branch confidentiality interests. Our responsibility to the constitutionally based prerogatives of the Executive Branch, our obligation to protect those prerogatives for all future occupants of the Office of the Presidency, and our respect for the rule of law require that we resist the overbroad demands in the Committee's letter.

As I have said numerous times, my office will work with the Committee through the constitutionally mandated accommodation process to provide the Committee with materials it can properly request. If the Committee intends to continue its inquiry, it would greatly advance that process if the Committee were to narrow the scope of the requests in the March 4 letter and articulate the legislative purpose and legal basis supporting each of the remaining requests.

Thank you for your attention to the important issues discussed above. I welcome the opportunity to discuss any of these points.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Pat A. Cipollone', is written over the typed name and title.

Pat A. Cipollone  
Counsel to the President

cc: The Honorable Doug Collins, Ranking Member

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit W**

**U.S. House of Representatives**  
**Committee on the Judiciary**

Washington, DC 20515-6216

One Hundred Sixteenth Congress  
May 17, 2019

Donald F. McGahn II, Esq.  
c/o William A. Burck, Esq.  
Quinn Emanuel Urquhart & Sullivan  
1300 I St. NW  
Suite 9000  
Washington, D.C. 20005

Dear Mr. McGahn:

The Committee on the Judiciary will hold a hearing on “Oversight of the Report by Special Counsel Robert S. Mueller, III: Former White House Counsel Donald F. McGahn, II,” on May 21, 2019 at 10:00 a.m., in Room 2141 of the Rayburn House Office Building. As you know, your presence is required pursuant to the subpoena the Committee served on you compelling your testimony for that date.<sup>1</sup>

On May 7, 2019, I wrote to your counsel and made clear that, absent a court order directing otherwise, you must appear or the Committee will proceed to hold you in contempt.<sup>2</sup> We have received no information indicating that any such order has been sought, much less obtained. In fact, the Committee has not even been provided a Department of Justice, Office of Legal Counsel (OLC) opinion articulating a legitimate legal basis that prevents you from providing testimony about the subject matters disclosed in the Special Counsel’s report. This is not surprising given that you have already discussed these subjects at length as part of an investigation for which the President expressly waived privilege, has publicly commented on, and even has disputed not only your account of the relevant events but also your good faith.

As I have previously stated, the Committee intends to focus on the very topics covered in the Special Counsel’s Report. For that reason, there can be no valid assertion of executive privilege given that President Trump “declined to assert any privilege over Mr. McGahn’s testimony,”<sup>3</sup> or over any portion of the Report itself.<sup>4</sup>

---

<sup>1</sup> Subpoena by Authority of the House of Representatives of the United States of America to Donald F. McGahn for documents and testimony, signed by Representative Jerrold Nadler, April 22, 2019. Enclosed please find additional information related to your testimony.

<sup>2</sup> Letter to William A. Burck from Chairman Jerrold Nadler (May 7, 2019).

<sup>3</sup> Michael S. Schmidt & Maggie Haberman, *White House Counsel, Don McGahn, Has Cooperated Extensively in Mueller Inquiry*, N.Y. TIMES, Aug. 18, 2018.

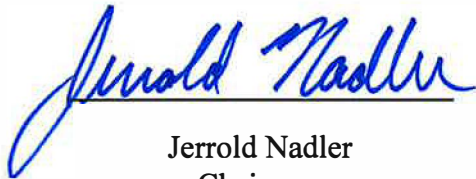
<sup>4</sup> *In re Sealed Case*, 121 F.3d 729, 741 (D.C. Cir. 1997) (holding that publication of information “waives [] privileges for the document or information specifically release[d].”).



Moreover, the subject of your testimony is critical to this Committee's ongoing investigative, oversight, and legislative efforts.<sup>5</sup> Since the Committee's last letter, the President on May 11, 2019, tweeted: "I was NOT going to fire Bob Mueller, and did not fire Bob Mueller. . . . Actually, Don McGahn had a much better chance of being fired than Mueller. Never a big fan!" The President's personal attorney, Rudolph Giuliani, likewise previously stated in an interview that your accounting of events "can't be taken at face value" and "could be the product of an inaccurate recollection or could be the product of something else."<sup>6</sup> Your testimony regarding these events—which the President and his counsel now unequivocally dispute—is thus critical to the Committee's ongoing investigation. In addition, the Committee is committed to providing you the opportunity to address the scurrilous allegations by the President and his counsel that you were not truthful or accurate in your interviews with the Special Counsel.

For all these reasons, the Committee looks forward to your testimony on May 21. To be clear, even if the President—supported by an OLC Opinion—invokes executive privilege over your testimony, and you decide to abide by that improper assertion, you are still required under the law and the penalty of contempt to "appear before the Committee to provide testimony, and invoke executive privilege where appropriate."<sup>7</sup>

Sincerely,



Jerrold Nadler  
Chairman  
House Committee on the Judiciary

cc: Doug Collins  
Ranking Member  
House Committee on the Judiciary

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<sup>5</sup> The Committee's need for this information is indisputably of the highest order, including fulfilling its constitutionally mandated legislative and oversight duties relating to election security, and investigating allegations of *Presidential* obstruction of justice. See Resolution Recommending that the House of Representatives Find William P. Barr, Attorney General, U.S. Department of Justice, In Contempt of Congress for Refusal to Comply with a Subpoena Duly Issued by the Committee on the Judiciary, Committee on the Judiciary, House, 116<sup>th</sup> Cong. 1. (2019).

<sup>6</sup> Michael S. Schmidt and Maggie Haberman, *Giuliani Attacks McGahn's Account to Mueller*, N.Y. TIMES, Apr. 19, 2019.

<sup>7</sup> See Mem. Op., *Comm. on Judiciary v. Miers*, No. 08-cv-0409-JDB (D.D.C. Jul. 31, 2008), at 106.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit X**

**quinn emanuel trial lawyers | washington, dc**

1300 I Street NW, Suite 900, Washington, District of Columbia 20005-3314 | TEL (202) 538-8000 FAX (202) 538-8100

WRITER'S DIRECT DIAL NO.  
(202) 538-8120

WRITER'S EMAIL ADDRESS  
williamburck@quinnemanuel.com

May 20, 2019

**VIA E-MAIL**

The Honorable Jerrold Nadler  
Chairman  
United States House of Representatives  
Committee on the Judiciary  
Washington, DC 20515-6216  
HJUD.Correspondence@mail.house.gov

Dear Chairman Nadler,

I am in receipt today of two documents provided by the White House Counsel's Office: first, a letter from the Honorable Pat A. Cipollone, the current Counsel to the President of the United States, informing me that the President has directed that my client, Donald F. McGahn, not appear at the Committee's hearing scheduled for tomorrow, Tuesday, May 21, 2019, at 10:00am EDT; and second, a memorandum from the Honorable Steven A. Engel, Assistant Attorney General for the Office of Legal Counsel at the Department of Justice, to Mr. Cipollone advising him that Mr. McGahn, as a former senior advisor to the President, is immune from compelled congressional testimony.

As you know, OLC performs the vital role of providing legal advice to the President and executive branch agencies. Consistent with that advice as reflected in Mr. Engel's memorandum, the President has unambiguously directed my client not to comply with the Committee's subpoena for testimony. As with the subpoena for documents, Mr. McGahn again finds himself facing contradictory instructions from two co-equal branches of government. The direction from the President finds further support in Mr. Engel's detailed and persuasive memorandum. Under these circumstances, and also conscious of the duties he, as an attorney, owes to his former client, Mr. McGahn must decline to appear at the hearing tomorrow.

Mr. McGahn understands from your prior correspondence that the Committee would vote to hold him in contempt should he not appear tomorrow and the House of Representatives may follow suit. While we disagree with the Committee's position and hope it will instead seek an accommodation with the White House, Mr. McGahn also must honor his ethical and legal

**quinn emanuel urquhart & sullivan, llp**

LOS ANGELES | NEW YORK | SAN FRANCISCO | SILICON VALLEY | CHICAGO | WASHINGTON, DC | HOUSTON | SEATTLE | BOSTON | SALT LAKE CITY  
LONDON | TOKYO | MANNHEIM | HAMBURG | PARIS | MUNICH | SYDNEY | HONG KONG | BRUSSELS | ZURICH | SHANGHAI | PERTH | STUTTGART

obligations as a former senior lawyer and senior advisor to the President. In short, it is our view that the Committee's dispute is not with Mr. McGahn but with the White House.

Mr. McGahn remains obligated to maintain the status quo and respect the President's instruction. In the event an accommodation is agreed between the Committee and the White House, Mr. McGahn will of course comply with that accommodation.

Sincerely,

A handwritten signature in blue ink, appearing to read 'W. A. Burck', with a long horizontal stroke extending to the right.

William A. Burck

cc: Honorable Doug Collins, Ranking Member

Enclosures

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
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2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit Y**

1 ALDERSON COURT REPORTING

2 SHAYLAH LYNN BURRILL

3 HJU141000

4 OVERSIGHT OF THE REPORT BY SPECIAL COUNSEL ROBERT S.

5 MUELLER III: FORMER WHITE HOUSE COUNSEL DONALD F. MCGAHN II

6 Tuesday, May 21, 2019

7 House of Representatives

8 Committee on the Judiciary

9 Washington, D.C.

10 The committee met, pursuant to call, at 10:04 a.m., in  
11 Room 2141, Rayburn House Office Building, Hon. Jerrold Nadler  
12 [chairman of the committee] presiding.

13 Present: Representatives Nadler, Lofgren, Jackson Lee,  
14 Cohen, Johnson of Georgia, Bass, Richmond, Cicilline, Lieu,  
15 Raskin, Jayapal, Demings, Correa, Scanlon, Garcia, Neguse,  
16 McBath, Stanton, Dean, Mucarsel-Powell, Escobar, Collins,  
17 Chabot, Gohmert, Jordan, Buck, Ratcliffe, Gaetz, Johnson of  
18 Louisiana, McClintock, Reschenthaler, Cline, Armstrong, and  
19 Steube.

20 Staff Present: Aaron Hiller, Deputy Chief Counsel; Arya

21 Harlharan ,Oversight Counsel; David Greengrass, Senior  
22 Counsel; John Doty, Senior Advisor; Lisette Morton, Director  
23 of Policy, Planning, and Member Services; Madeline Strasser,  
24 Chief Clerk; Moh Sharma, Member Services and Outreach  
25 Advisor; Susan Jensen, Parliamentarian/Senior Counsel; Sophie  
26 Brill, Counsel; Will Emmons, Professional Staff Member;  
27 Brendan Belair, Minority Chief of Staff; Jon Ferro, Minority  
28 Parliamentarian; Carlton Davis, Minority Chief Oversight  
29 Counsel; Ashley Callen, Minority Senior Adviser and Oversight  
30 Counsel; and Erica Barker, Minority Chief Legislative Clerk.

31

32 Chairman Nadler. The Judiciary Committee will come to  
33 order.

34 Without objection, the chair is authorized to declare  
35 recesses of the committee at any time.

36 We welcome everyone to today's hearing on Oversight of  
37 the Report by Special Counsel Robert Mueller III: Former  
38 White House Counsel Donald McGahn II. I will now recognize  
39 myself for an opening statement.

40 More than a year ago, White House counsel Don McGahn sat  
41 for the first of several interviews with special counsel  
42 Robert Mueller. Over the course of those interviews, he  
43 described how the President directed him to have the special  
44 counsel fired. He described how the President ordered him to  
45 lie about it. He described several other obstructive  
46 incidents outlined in the special counsel's report.

47 The President, in contrast, refused to be interviewed by  
48 the special counsel or even to answer written questions about  
49 his attempts to obstruct the investigation. Instead, to  
50 address the allegations spelled out by Mr. McGahn and  
51 outlined in the report, President Trump relied on his  
52 preferred mode of communication. He took to Twitter to call  
53 Mr. McGahn a liar. His lawyers went on cable television to  
54 do the same, to call Mr. McGahn a liar.

55 There are reports of the President and his lieutenants  
56 exerting other kinds of pressure on Mr. McGahn. In short,



57 the President took it upon himself to intimidate a witness  
58 who has a legal obligation to be here today. This conduct is  
59 not remotely acceptable.

60 The White House asserts that Mr. McGahn does not have to  
61 appear today because he is entitled to "absolute immunity"  
62 from our subpoenas. We know this argument is wrong, of  
63 course, because the executive branch has tried this approach  
64 before. In 2007, President George Bush attempted to invoke a  
65 similarly broad and unjustified assertion of executive  
66 privilege and asked his former counsel Harriet Miers to  
67 ignore a subpoena issued by this committee. Ms. Miers also  
68 did not appear at her scheduled hearing.

69 Judge John Bates, who was appointed by President Bush,  
70 slapped down that argument fairly quickly. "The executive  
71 cannot identify a single judicial opinion that recognizes  
72 absolute immunity for senior presidential advisers in this or  
73 any other context. That simple, yet critical fact bears  
74 repeating. The asserted absolute immunity claim here is  
75 entirely unsupported by the case law," from the judicial  
76 decision.

77 In other words, when this committee issues a subpoena,  
78 even to a senior presidential adviser, the witness must show  
79 up. Our subpoenas are not optional. Mr. McGahn has a legal  
80 obligation to be here for this scheduled appearance. If he  
81 does not immediately correct his mistake, this committee will

82 have no choice but to enforce the subpoena against him.

83 Mr. McGahn did not appear today because the President  
84 prevented it, just as the President has said that he would  
85 "fight all subpoenas" issued by Congress as part of his  
86 broader efforts to cover up his misconduct. This  
87 stonewalling makes it all the more important to highlight  
88 some of the incidents that Mr. McGahn is said to have  
89 witnessed. Let me recount some of them.

90 We know that the President directed Mr. McGahn to  
91 prevent then Attorney General Sessions from recusing himself  
92 from overseeing the investigation into Russian election  
93 interference. On March 3, 2017, shortly after Attorney  
94 General Jeff Sessions did recuse himself from the Russia  
95 investigation, the President summoned Mr. McGahn to the Oval  
96 Office. According to the Mueller report, "The President  
97 opened the conversation by saying, 'I don't have a lawyer.'"

98 The President told Mr. McGahn that he wished that Roy  
99 Cohn was his attorney instead. Roy Cohn, of course, is known  
100 principally as the chief architect of the Army-McCarthy  
101 hearings that destroyed so many lives back in 1954, an actual  
102 political witch hunt, not the imaginary kind that the  
103 President decries.

104 Mr. Cohn served as President Trump's lawyer for a long  
105 time, defending the President against Federal discrimination  
106 suits before he -- that is, Mr. Cohn -- was ultimately

107     disbarred for unethical practices in 1986.

108             Mr. McGahn refused to follow blindly into unethical  
109     behavior. Mr. McGahn told the President that the Department  
110     of Justice ethics officials had weighed in and that  
111     Mr. Sessions would not unrecuse himself, and he advised the  
112     President not to have any contact with Mr. Sessions on the  
113     matter. Days later, the President did exactly the opposite.

114             He summoned Mr. McGahn and Mr. Sessions to Mar-a-Lago,  
115     where the President again "expressed his anger." He said he  
116     wanted Mr. Sessions to act as his fixer. He said he wanted  
117     Mr. Sessions to undo his recusal and to limit the scope of  
118     the investigation. But Mr. Sessions, too, refused the  
119     President's orders.

120             On June 17, 2017, the President took his displeasure a  
121     step further. He called Mr. McGahn at home and directed him  
122     to order Rod Rosenstein to fire Robert Mueller. "Mueller has  
123     to go," the President barked, "Call me back when you do it."

124             Once again, Mr. McGahn refused. This time, Mr. McGahn  
125     felt the President's behavior was so inappropriate that he  
126     said he would rather resign than trigger a constitutional  
127     crisis.

128             In early 2018, after press reports described the  
129     President's attempt to force Mr. McGahn to remove the special  
130     counsel on his behalf, the President repeated his pattern.  
131     He summoned Mr. McGahn to his office, and he got angry.

132 "This story doesn't look good. You need to correct this.

133 You are the White House counsel," President Trump told

134 Mr. McGahn.

135 "What about these notes? Why do you take notes?" the

136 President said to Mr. McGahn, inquiring why Mr. McGahn had

137 documented their conversation.

138 The President then told Mr. McGahn to tell the American

139 people something that was not true. He asked him to deny

140 those reports publicly. Mr. McGahn again refused the

141 President's order. He refused the President's order to lie

142 to the American people on the President's behalf. Six months

143 later, the President announced that Mr. McGahn would be

144 leaving the White House.

145 The special counsel found Mr. McGahn to be "a credible

146 witness with no motive to lie or exaggerate, given the

147 position he held in the White House." That is from the

148 Mueller report.

149 The special counsel also found the following,

150 "Substantial evidence indicates that by June 17, 2017, the

151 President knew his conduct was under investigation by a

152 Federal prosecutor who could present any evidence of Federal

153 crimes to a grand jury. Substantial evidence indicates that

154 the President's attempts to remove the special counsel were

155 linked to the special counsel's oversight of investigations

156 that involved the President's conduct and, most immediately,

157 to reports that the President was being investigated for  
158 potential obstruction of justice.

159 "Substantial evidence indicates --" and these are all  
160 quotes from the report. "Substantial evidence indicates that  
161 in repeatedly urging McGahn to dispute that he was ordered to  
162 have the special counsel terminated, the President acted for  
163 the purpose of influencing McGahn's account in order to  
164 deflect or prevent further scrutiny of the President's  
165 conduct towards the investigation. Substantial evidence  
166 indicates that the President's efforts to have Sessions limit  
167 the scope of the special counsel's investigation to future  
168 election interference was intended to prevent further  
169 investigative scrutiny of the President and his campaign's  
170 conduct." Those are all quotes from the special counsel's  
171 report.

172 I believe that each of these incidents, documented in  
173 detail in the Mueller report, constitutes a crime. But for  
174 the Department of Justice's policy of refusing to indict any  
175 sitting President, I believe the President would have been  
176 indicted and charged with these crimes.

177 I am not alone in this belief. Over 900 former Federal  
178 prosecutors from across the political spectrum whose job was  
179 to determine when the elements of a crime have been satisfied  
180 have stated -- have agreed that the President committed  
181 crimes that would have been charged if he were not the

182 sitting President. And I believe that the President's  
183 conduct since the report was released, with respect to  
184 Mr. McGahn's testimony and other information we have sought,  
185 has carried this pattern of obstruction and cover-up well  
186 beyond the four corners of the Mueller report.

187 The President has declared out loud his intention to  
188 cover up this misconduct. He told Mr. McGahn to commit  
189 crimes on his behalf. He told Mr. McGahn lie about it.  
190 After the report came out, the President claimed that  
191 Mr. McGahn lied to the special counsel about what happened.  
192 Then he directed Mr. McGahn not to come here today so that  
193 the public would not hear his testimony and so that we could  
194 not question him.

195 President Trump may think he can hide behind his lawyers  
196 as he launches a series of baseless legal arguments designed  
197 to obstruct our work. He cannot think these legal arguments  
198 will prevail in court, but he can think he can slow us down  
199 and run out the clock on the American people.

200 Let me be clear. This committee will hear Mr. McGahn's  
201 testimony, even if we have to go to court to secure it. We  
202 will not allow the President to prevent the American people  
203 from hearing from this witness.

204 We will not allow the President to block congressional  
205 subpoenas, putting himself and his allies above the law. We  
206 will not allow the President to stop this investigation. And

207 nothing in these unjustified and unjustifiable legal attacks  
208 will stop us from pressing forward with our work on behalf of  
209 the American people. We will hold this President  
210 accountable, one way or the other.

211 It is now my pleasure to recognize the ranking member of  
212 the Judiciary Committee, the gentleman from Georgia,  
213 Mr. Collins, for his opening statement.

214 Mr. Collins. Thank you, Mr. Chairman, and thank you for  
215 all that have gathered here again.

216 Here we go again. The theater is open, and the  
217 summations are coming in. In fact, right now we are again  
218 running over the norms of congressional oversight. We are  
219 dabbling at the edges of running roughshod on the  
220 Constitution, asking for things that we don't.

221 But I am glad about one thing. I am glad that the  
222 chairman read into the record today the Mueller report. I am  
223 glad that he quoted, as he said, this is a quote directly  
224 from the Mueller report. I just wish my chairman would  
225 actually go read the rest of it that he has been offered to  
226 read, which he has chosen not to read.

227 But he did leave out one thing. He left out something  
228 in the Mueller report from just now. He read McGahn's  
229 testimony beautifully, did everything right. But he left out  
230 what he doesn't want to have to come back to and the  
231 frustrating thing that has brought us here again and again

232 and again, and that is the conclusions. There was no  
233 collusion. There was no obstruction charge. There is  
234 nothing here.

235 After 2 years of doing this, we can read it in, you can  
236 talk about how you don't like it, you can talk about what you  
237 would like to have. But at the end of the day, it is  
238 interesting we will read in the quotes that make the  
239 headlines, but we are also not going to read in the bottom  
240 line of what was actually concluded.

241 So the Democrats are here trying again. The Mueller  
242 report concluded there was no collusion, no obstruction.  
243 Because the report failed to provide damning information  
244 against the President, the majority claims we need to dig  
245 deeper, deeper than the 2 years of investigation conducted by  
246 what is considered a prosecutorial dream team because that  
247 probe ended without criminal charges against the President or  
248 his family.

249 The special counsel closed up shop without giving  
250 Democrats anything to deliver to their base. Now the  
251 Democrats are trying desperately to make something out of  
252 nothing, which is why the chairman has again haphazardly  
253 subpoenaed today's witness. That move, though, has actually  
254 ensured the witness will not testify.

255 You know, this is becoming a pattern. The chairman knew  
256 this, I believe, when he sent the subpoena last month. But



257 instead of inviting the witness to testify voluntarily and  
258 working with McGahn's counsel to find mutual agreeable time  
259 and scope for the testimony, the chairman rushed to maximize  
260 headlines by issuing a subpoena. That subpoena was the third  
261 in just 4 months, more subpoenas than the prior chairman  
262 issued in 6 years.

263 The chairman had several ways out here. He took none of  
264 them. The chairman could have invited the witness to testify  
265 voluntarily. That was the practice in the 1990s when the  
266 White House counsel testified before Congress. But the  
267 chairman did not do that. Instead, he launched a subpoena at  
268 the witness without any consultation or follow-up with the  
269 witness' lawyer.

270 The chairman could have invited the witness to testify  
271 behind closed doors, but that would have been politically  
272 expedient, and you would not have been here, and the show  
273 would not have been as exciting. A closed-door conversation  
274 would not have generated those headlines and everything that  
275 we are looking at today. Even gaveling in today's hearing  
276 without a witness is theatrical.

277 The cameras love a spectacle, and the majority loves the  
278 chance to rant against the administration. I just am glad  
279 today to see that we don't have chicken on the dais.

280 The chairman orchestrated today's confrontation when he  
281 could have avoided it because he is more interested in the

282 fight than the fact finding. Take the Mueller report, which  
283 we have already heard quoted from. More than 99 percent the  
284 Justice Department has offered to the chairman. For an  
285 entire month, the chairman refused to take a look at it.

286 The Attorney General who volunteered to testify before  
287 the committee, the chairman changed the rules for the first  
288 time in the committee's 200-year history, thus blocking  
289 General Barr from testifying.

290 I cannot emphasize this enough. The track record  
291 demonstrates he does not actually want information. He wants  
292 the fight, but not the truth. The closer he actually comes  
293 to obtaining information, the further we run from it.

294 The Democrats claim to need today's witness to  
295 investigate obstruction of justice, but that investigation  
296 was already done. Robert Mueller spent 2 years running it  
297 and then closed it. We are not a prosecutorial body, but a  
298 legislative body that does have valid congressional  
299 oversight. But let us talk about that Mueller report for  
300 just a second. It is really interesting to me that the  
301 Mueller report was actually -- within 24 hours of coming out,  
302 the chairman and the majority subpoenaed for all of the  
303 documents.

304 In fact, we have a legal subpoena that asked the  
305 Attorney General to provide documents he cannot legally  
306 provide. That has been covered in this committee for the

307 last 2 weeks exhaustively, and even the panel that was with  
308 us last week agreed that the subpoena asked the Attorney  
309 General to do something illegal by exposing 6(e) information.  
310 That was his own witnesses said that last week.

311 But you know what is interesting to me is that we have  
312 subpoenaed the documents. We have subpoenaed that we want  
313 underlying documents. We have subpoenaed stuff that we can't  
314 get. But you know the one thing we seem to avoid is  
315 Mr. Mueller himself, the one who wrote it.

316 We have asked since April about Mr. Mueller coming. But  
317 every time we seem to get close to Mueller, Mueller just gets  
318 pushed on a little bit. Hadn't seen a subpoena here, and  
319 this is what is really amazing. We will get back to  
320 subpoenas in a moment.

321 But just think about that. You wanted the work of the  
322 author, but you don't want to talk to the author. Keep that  
323 pinned for just a moment. When we look at this, 99 percent  
324 of the information is at the Democrats' fingertips, and it is  
325 the Mueller report the Attorney General offered to Speaker  
326 Pelosi, Chairman Nadler, and others to have seen it, but they  
327 refuse.

328 So don't be fooled. The majority wants the fight. They  
329 want the drama. He does not actually want the information he  
330 claims to be seeking. After the administration made volumes  
331 of information available to this committee, the chairman

332 issued overbroad subpoenas and now harangues the  
333 administration for being unable to comply with those  
334 subpoenas.

335 In fact, it is the Democrats who are not engaging in the  
336 accommodation process, abruptly cutting off negotiations,  
337 rejecting olive branches by the administration. This is what  
338 -- I want to come back to something my chairman just said a  
339 moment ago. His quote was in his opening statements that our  
340 subpoenas are not optional.

341 Well, we found out a lot about subpoenas over the last  
342 month or so in this committee. I found out that subpoenas  
343 maybe now are not optional. Let us add to the list.  
344 Subpoenas are also a discussion starter. A subpoena is to  
345 give us better standing in court. Not my quotes, the  
346 chairman's quotes.

347 So what is it? Is a subpoena the legal document that we  
348 have talked about all along in here and the forceful document  
349 that all attorneys in this country actually use, or is it a  
350 discussion starter? Is it to help our standing in court, or  
351 is it we don't want it ignored?

352 At this time, it is amazing to me that the accommodation  
353 process -- and we talk about the committee, and the chairman  
354 forcefully talked about our oversight. I agree with the  
355 chairman on this point. This committee and all committees in  
356 Congress have oversight responsibility, but it is also the

357 sacred responsibility of the chairman and the majority to use  
358 it properly and to not headlong rush into subpoenas when you  
359 don't get what you want.

360 That is all we have seen in 5 months here. When we  
361 don't get what we want, we subpoena. The first one was the  
362 Acting Attorney General. We subpoenaed, and then we backed  
363 off. We caved. Then everything else has become a race to  
364 get a headline. The accommodation process, not happening.  
365 The accommodation process, never here.

366 So don't be fooled. You may have come wanting -- you  
367 may have an opinion that says everything is wrong today with  
368 the Mueller report and the President is guilty, but don't  
369 undercut congressional oversight because you can't wait.  
370 That is the problem we have right now.

371 And so the question is, are we tearing at the fabric of  
372 congressional oversight? It was really interesting to hear  
373 some of that last week. When you have a committee that has  
374 issued subpoenas that ask the Attorney General to do  
375 something illegal, when you have the subpoenas when no  
376 accommodation process has been put in place, when you have  
377 contempt issues that have been in part with no process and no  
378 time going through, I just submit to you this.

379 Whatever your opinion on the Mueller report, great.  
380 Glad you have it. But you didn't get it here today, and you  
381 are not getting it from this committee because this committee

382 undoubtedly doesn't like the author or want to talk to the  
383 author of the report. They just want to talk about the  
384 report and make innuendo and attack the President at the  
385 middle of the day when this committee, who has charge of  
386 immigration, who has charge of intellectual property, who we  
387 have touched none of with a crisis at the border.

388 We have an admission that the economy is good, jobs are  
389 happening, unemployment is at its lowest rate. I guess at  
390 the end of the day, we can't find something that the Mueller  
391 report lets them hang their I-word, "impeachment," on, which  
392 they can't even agree on, because the President is continuing  
393 to do his job. And we are here again with the circus in full  
394 force.

395 With that, I yield back.

396 Mr. Cohen. Mr. Chairman? Mr. Chairman?

397 Mr. Chabot. Mr. Chairman?

398 Chairman Nadler. Thank you, Mr. Collins. Who seeks  
399 recognition?

400 Mr. Cohen. Move to strike the last word.

401 Chairman Nadler. The gentleman from Tennessee?

402 Mr. Cohen. Move to adjourn.

403 Chairman Nadler. Motion is made to adjourn.

404 Mr. Chabot. Mr. Chairman? Mr. Chairman?

405 Chairman Nadler. Motion to adjourn is not debatable.

406 All in favor?

407 Opposed?

408 Mr. Chabot. Recorded vote.

409 Chairman Nadler. Do I hear a request for a recorded  
410 vote?

411 Mr. Chabot. Request for recorded vote.

412 Chairman Nadler. The clerk will call the roll on the  
413 motion to adjourn.

414 Ms. Strasser. Mr. Nadler?

415 Chairman Nadler. Aye.

416 Ms. Strasser. Mr. Nadler votes aye.

417 Ms. Lofgren?

418 Ms. Lofgren. Aye.

419 Ms. Strasser. Ms. Lofgren votes aye.

420 Ms. Jackson Lee?

421 Ms. Jackson Lee. Aye.

422 Ms. Strasser. Ms. Jackson Lee votes aye.

423 Mr. Cohen?

424 Mr. Cohen. Aye.

425 Ms. Strasser. Mr. Cohen votes aye.

426 Mr. Johnson of Georgia?

427 Mr. Johnson of Georgia. Aye.

428 Ms. Strasser. Mr. Johnson of Georgia votes aye.

429 Mr. Deutch?

430 Ms. Bass?

431 Ms. Bass. Aye.

432 Ms. Strasser. Ms. Bass votes aye.

433 Mr. Richmond?

434 Mr. Richmond. Aye.

435 Ms. Strasser. Mr. Richmond votes aye.

436 Mr. Jeffries?

437 Mr. Cicilline?

438 Mr. Cicilline. Aye.

439 Ms. Strasser. Mr. Cicilline votes aye.

440 Mr. Swalwell?

441 Mr. Lieu?

442 Mr. Lieu. Aye.

443 Ms. Strasser. Mr. Lieu votes aye.

444 Mr. Raskin?

445 Mr. Raskin. Aye.

446 Ms. Strasser. Mr. Raskin votes aye.

447 Ms. Jayapal?

448 Ms. Jayapal. Aye.

449 Ms. Strasser. Ms. Jayapal votes aye.

450 Mrs. Demings?

451 Mrs. Demings. Aye.

452 Ms. Strasser. Mrs. Demings votes aye.

453 Mr. Correa?

454 Mr. Correa. Aye.

455 Ms. Strasser. Mr. Correa votes aye.

456 Ms. Scanlon?



457 Ms. Scanlon. Aye.  
458 Ms. Strasser. Ms. Scanlon votes aye.  
459 Ms. Garcia?  
460 Ms. Garcia. Aye.  
461 Ms. Strasser. Ms. Garcia votes aye.  
462 Mr. Neguse?  
463 Mr. Neguse. Aye.  
464 Ms. Strasser. Mr. Neguse votes aye.  
465 Mrs. McBath?  
466 Mrs. McBath. Aye.  
467 Ms. Strasser. Mrs. McBath votes aye.  
468 Mr. Stanton?  
469 Mr. Stanton. Aye.  
470 Ms. Strasser. Mr. Stanton votes aye.  
471 Ms. Dean?  
472 Ms. Dean. Aye.  
473 Ms. Strasser. Ms. Dean votes aye.  
474 Ms. Mucarsel-Powell?  
475 Ms. Mucarsel-Powell. Aye.  
476 Ms. Strasser. Ms. Mucarsel-Powell votes aye.  
477 Ms. Escobar?  
478 Ms. Escobar. Aye.  
479 Ms. Strasser. Ms. Escobar votes aye.  
480 Mr. Collins?  
481 Mr. Collins. No.

482 Ms. Strasser. Mr. Collins votes no.  
483 Mr. Sensenbrenner?  
484 Mr. Chabot?  
485 Mr. Chabot. No. And this is disgraceful.  
486 Ms. Strasser. Mr. Chabot votes no.  
487 Mr. Gohmert?  
488 Mr. Gohmert. No.  
489 Ms. Strasser. Mr. Gohmert votes no.  
490 Mr. Jordan?  
491 Mr. Jordan. No.  
492 Ms. Strasser. Mr. Jordan votes no.  
493 Mr. Buck?  
494 Mr. Buck. No.  
495 Ms. Strasser. Mr. Buck votes no.  
496 Mr. Ratcliffe?  
497 Mr. Ratcliffe. No.  
498 Ms. Strasser. Mr. Ratcliffe votes no.  
499 Mrs. Roby?  
500 Mr. Gaetz?  
501 Mr. Gaetz. No.  
502 Ms. Strasser. Mr. Gaetz votes no.  
503 Mr. Johnson of Louisiana?  
504 Mr. Johnson of Louisiana. No.  
505 Ms. Strasser. Mr. Johnson of Louisiana votes no.  
506 Mr. Biggs?

507 Mr. McClintock?

508 Mr. McClintock. No.

509 Ms. Strasser. Mr. McClintock votes no.

510 Mrs. Lesko?

511 Mr. Reschenthaler?

512 Mr. Reschenthaler. No.

513 Ms. Strasser. Mr. Reschenthaler votes no.

514 Mr. Cline?

515 Mr. Cline. No.

516 Ms. Strasser. Mr. Cline votes no.

517 Mr. Armstrong?

518 Mr. Armstrong. No.

519 Ms. Strasser. Mr. Armstrong votes no.

520 Mr. Steube?

521 Mr. Steube. No.

522 Ms. Strasser. Mr. Steube votes no.

523 Chairman Nadler. Is there anyone who wishes to vote who

524 hasn't voted?

525 [No response.]

526 Chairman Nadler. The clerk will report.

527 Ms. Strasser. Mr. Chairman, there are 21 ayes and 13

528 noes.

529 Chairman Nadler. There are 21 ayes and 13 noes. The

530 motion to adjourn is adopted, and the hearing is adjourned.

531 [Whereupon, at 10:27 a.m., the committee was adjourned.]

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit Z**

**U.S. House of Representatives**  
**Committee on the Judiciary**

**Washington, DC 20515-6216**  
**One Hundred Sixteenth Congress**

May 31, 2019

Donald F. McGahn II, Esq.  
c/o William A. Burck, Esq.  
Quinn Emanuel Urquhart & Sullivan  
1300 I St. NW  
Suite 9000  
Washington, D.C. 20005

Mr. Pat Cipollone  
Counsel to the President  
The White House  
1600 Pennsylvania Ave, N.W.  
Washington, D.C. 20002

Dear Mr. McGahn and Mr. Cipollone:

I write to follow up on the Committee's prior correspondence to Donald F. McGahn II and/or his counsel dated May 7, 2019, May 17, 2019, and May 20, 2019 (all of which are attached), regarding the Judiciary Committee's April 22, 2019 subpoena to Mr. McGahn.

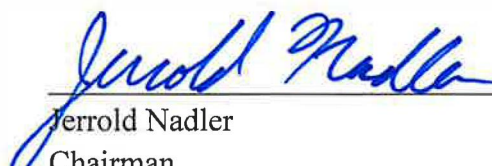
First, with respect to the production of documents, counsel for Mr. McGahn informed us on May 7, 2019 that he would not produce documents in his possession responsive to the Committee's subpoena. The stated reason for the failure to produce responsive documents was that the White House directed that such materials be withheld "because they implicate significant Executive Branch confidentiality interests and executive privilege." As explained in the Committee's May 7 letter to Mr. McGahn's counsel, the Committee does not consider a direction by the White House to be a proper or legitimate assertion of any legal privilege. Moreover, the Committee disputes that any valid claim of privilege exists as to documents provided by the White House to Mr. McGahn and/or his counsel. Finally, as the May 7 letter made clear, regardless of the White House's direction, the Committee's subpoena to Mr. McGahn obligates him to produce a log as to any documents in his possession, custody, or control that are being withheld on the grounds of privilege.

We have not yet received such a log, which was due on May 7. To facilitate the resolution of this dispute regarding the log, the Committee is prepared to accept a modified log

that sets forth only the author, recipient(s), and the general subject matter of the record being withheld, as well as the basis for the assertion of the privilege. That is the minimum amount of information that has been accepted by the federal courts.<sup>1</sup> We request that Mr. McGahn produce a modified log not later than June 7, 2019, as well as any documents responsive to the subpoena for which no claim of privilege is being asserted.

Turning to Mr. McGahn's testimony, for all the reasons explained in the Committee's May 7, May 17, and May 20 letters, it was unlawful for Mr. McGahn to fail to appear altogether before the Committee on May 21. He, like any other witness, "must appear before the Committee to provide testimony, and invoke executive privilege where appropriate."<sup>2</sup> In addition, the Committee intends to inquire about certain events that postdate Mr. McGahn's time at the White House, such as the President's public statements regarding Mr. McGahn and the White House's communications with and requests of Mr. McGahn or his counsel. The Committee views these subjects as not subject to any possible claim of privilege. Nevertheless, the Committee remains willing to discuss any reasonable accommodation(s) that would facilitate Mr. McGahn's appearance before the Committee, including limiting the testimony to the specific events detailed in the Special Counsel's report, identifying with greater specificity the precise areas of intended inquiry, and agreeing to the presence of White House counsel during any testimony, so that Mr. McGahn may consult regarding the assertion of executive privilege. Please let us know whether you are willing to engage in such accommodation discussions by no later than June 7.

Sincerely,

  
Jerrold Nadler  
Chairman  
House Committee on the Judiciary

cc: The Hon. Doug Collins  
Ranking Member, House Committee on the Judiciary

Enclosures

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<sup>1</sup> *Comm. on Oversight & Gov't Reform v. Holder*, No. CV 12-1332 (ABJ), 2014 WL 12662665, at \*2 (D.D.C. Aug. 20, 2014), *modified*, No. CV 12-1332 (ABJ), 2014 WL 12662666 (D.D.C. Sept. 9, 2014) (citing *Comm. on the Judiciary v. Miers*, 558 F. Supp. 2d 53, 107 (D.D.C. 2008)).

<sup>2</sup> *Comm. on the Judiciary v. Miers*, 558 F. Supp. 2d 53, 107 (D.D.C. 2008). *See also U.S. v. Bryan*, 339 U.S. 323, 331 (1950) ("persons summoned as witnesses by competent authority have certain minimum duties and obligations which are necessary concessions to the public interest in the orderly operation of legislative and judicial machinery").

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ONE HUNDRED SIXTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

May 7, 2019

William A. Burck, Esq.  
Quinn Emanuel Urquhart & Sullivan  
1300 I St. NW  
Suite 9000  
Washington, D.C. 20005

Dear Mr. Burck:

On Monday, April 22, the House Committee on the Judiciary served a subpoena on your client, former White House Counsel Donald F. McGahn II, compelling the production of documents in Mr. McGahn's possession or control by May 7, and his testimony on May 21, 2019. We write in response to your letter received this morning regarding that subpoena.

As an initial matter, regarding the subpoenaed documents, the White House Counsel's letter did not actually *invoke* executive privilege, but rather merely suggested at the 11th hour – without providing any supporting authority – that all requested documents “*implicate significant Executive Branch confidential interests and executive privilege.*”<sup>1</sup> This blanket suggestion of potential privilege is entirely insufficient. As the district court for the District of Columbia held in *Committee on the Judiciary v. Miers*, a subpoena recipient is “not excused from compliance with [a] Committee’s subpoena by virtue of a claim of executive privilege that *may ultimately be made.*”<sup>2</sup> Nor can a “blanket assertion of privilege over all records generated after a particular date . . . pass muster,” without a “showing . . . that any of the individual records satisf[y] the prerequisites for the application of the privilege.”<sup>3</sup>

Even if the President were to properly invoke privilege, any claim of executive privilege has been waived as to documents that the White House voluntarily disclosed to Mr. McGahn and

<sup>1</sup> Letter to Chairman Nadler from Pat A. Cipollone (May 7, 2019) (*emphasis added*).

<sup>2</sup> Mem. Op., *Comm. on Judiciary v. Miers*, No. 08-cv-0409-JDB (D.D.C. Jul. 31, 2008), at 91 (*emphasis added*).

<sup>3</sup> *Committee on the Judiciary, U.S. House of Representatives v. Miers*, 558 F. Supp. 2d 53 (D.D.C. 2008).

his counsel. The D.C. Circuit expressly held in *In re Sealed Case (Espy)* that the White House “waive[s] its claims of privilege in regard to specific documents that it voluntarily reveal[s] to third parties outside the White House.”<sup>4</sup> In *Espy*, as is the case here, the disclosure at issue was to the attorney for a former government official.<sup>5</sup> Thus, given that there has been neither an actual assertion of executive privilege, nor an individualized showing that the privilege would apply to the subpoenaed records, the Committee continues to insist upon compliance with the subpoena.

As to Mr. McGahn’s own document production obligations, the subpoena plainly directs that your client must provide a privilege log containing specific information for any document in his possession or control that “is withheld in full or in part on any basis,” including on “the basis of a privilege asserted by or on behalf of the White House, or at the request of the White House.”<sup>6</sup> As the instructions also make clear, any “objections or claims of privilege are waived if you fail to provide an explanation of why full compliance is not possible and a log identifying with specificity the ground(s) for withholding each withheld document prior to the request compliance date.”<sup>7</sup> In accordance with the requirements laid out in our subpoena, we expect a full privilege log specifying each document withheld, the asserted basis for so doing and the other information demanded, to be provided forthwith.

Turning to the other requirement of the subpoena – that Mr. McGahn appear before the Committee to provide testimony in two weeks – I fully expect that the Committee will hold Mr. McGahn in contempt if he fails to appear before the Committee, unless the White House secures a court order directing otherwise.<sup>8</sup> Further, even if Mr. McGahn is authorized by court order to invoke executive privilege as to certain testimony, he still is required by law to “appear before the Committee to provide testimony, and invoke executive privilege where appropriate.”<sup>9</sup>

Consistent with the rules of the House of Representatives, and as the Supreme Court has admonished, “[a] subpoena has never been treated as an invitation to a game of hare and hounds, in which the witness must testify only if cornered at the end of the chase. If that were the case, then, indeed, the great power of testimonial compulsion, so necessary to the effective functioning of courts and legislatures, would be a nullity.”<sup>10</sup> And the Supreme Court has “often iterated the

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<sup>4</sup> *In re Sealed Case*, 121 F.3d 729, 741-42 (D.C. Cir. 1997).

<sup>5</sup> *See id.*

<sup>6</sup> Subpoena by Authority of the House of Representatives of the United States of America to Donald F. McGahn for documents and testimony, signed by Representative Jerrold Nadler, April 22, 2019.

<sup>7</sup> *Id.*

<sup>8</sup> *See, e.g., United States v. Bryan*, 339 U.S. 323, 332 (1950) (reasoning that a party cannot fail to comply with a subpoena absent a “return of the writ” providing reasons for non-compliance, because to “deny the Committee the opportunity to consider the objection or remedy it is in itself a contempt of its authority and an obstruction of its processes”).

<sup>9</sup> *Miers*, 558 F. Supp. 2d 53, 106 (D.D.C. 2008).

<sup>10</sup> *Bryan*, 339 U.S. at 331.



importance of this public duty, which every person within the jurisdiction of the Government is bound to perform when properly summoned.”<sup>11</sup>

As I am sure you are aware, the President recently declared that he is “fighting *all* the subpoenas” issued by Congress, evidently without regard to whether he has any legal basis to do so.<sup>12</sup> To be clear, a letter from the White House in service of the President’s apparent goal of blocking or delaying testimony that the President believes would be politically damaging is not a basis for Mr. McGahn to violate his legal obligation to appear before the Committee. Rather, if the President wishes to block Mr. McGahn’s appearance in the face of a duly issued subpoena, the burden rests with the White House to file an action in court to attempt to do so.

Moreover, with regard to Mr. McGahn’s testimonial obligations, there is no valid executive privilege invocation that could be asserted in good faith regarding the subject of the Special Counsel’s investigation and report. President Trump had the opportunity to assert executive privilege over Mr. McGahn’s interviews with the Special Counsel and, for strategic reasons, “declined to assert any privilege over Mr. McGahn’s testimony,” allowing Mr. McGahn to answer the Special Counsel’s questions “fulsomely and honestly.”<sup>13</sup> Thereafter, the White House made the same strategic decision with regard to publication of the report itself not to assert executive privilege over *any* portion of the report, including portions describing Mr. McGahn’s communications with the President and other senior officials in extensive detail.<sup>14</sup> As the D.C. Circuit has already recognized, publication of such information “waives [] privileges for the document or information specifically released.”<sup>15</sup>

The President and his personal counsel have also routinely commented publicly regarding the President’s communications with Mr. McGahn, and the content of Mr. McGahn’s testimony to the Special Counsel. By way of example, on April 25, shortly after the Report was released, President Trump denied a central event described by Mr. McGahn, tweeting, “I never told the White House Counsel Don McGahn to fire Robert Mueller.”<sup>16</sup> As has long been recognized, no person—not even the President—can employ privilege as both a sword and a shield, selectively cherry picking which information to tout publicly in his defense, and which information to deliberately withhold from the American people.<sup>17</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> Charlie Savage, *Trump Vows Stonewall of ‘All’ House Subpoenas*, N.Y. Times, Apr. 24, 2019 (emphasis added).

<sup>13</sup> Michael S. Schmidt & Maggie Haberman, *White House Counsel, Don McGahn, Has Cooperated Extensively in Mueller Inquiry*, N.Y. TIMES, Aug. 18, 2018.

<sup>14</sup> Attorney General Barr Press Conference on April 18, 2019 (the President confirmed that “he would not assert privilege over the Special Counsel’s report . . . [and] no material has been redacted based on executive privilege.”).

<sup>15</sup> *In re Sealed Case*, 121 F.3d at 741.

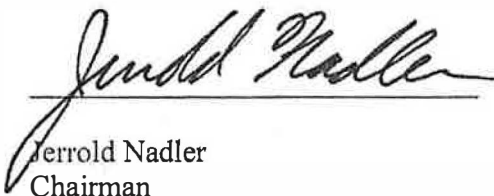
<sup>16</sup> Donald J. Trump (@realDonaldTrump), Twitter (Apr. 25, 2019, 4:47 AM).

<sup>17</sup> See, e.g., *Nixon v. Sirica*, 487 F.2d 700, 717-18 (D.C. Cir. 1973) (considering public statements by President Nixon to be a factor undermining the White House claimed need for confidentiality in related conversations).

Lastly, this Committee is currently engaged in an investigation into alleged obstruction of justice, public corruption and other abuses of power by the President and his administration. Even in its redacted form, the Special Counsel's report offers substantial evidence and analysis that the President did, in fact, engage in multiple acts of obstruction. Mr. McGahn provided critical information that appears throughout Volume II of the Special Counsel's report, detailing incidents in which, *inter alia*, the President: sought to stop former Attorney General Sessions from recusing himself from the Russia investigation and then to have Sessions reverse his recusal decision<sup>18</sup>; directed Mr. McGahn to have Special Counsel Mueller fired<sup>19</sup>; directed Mr. McGahn to deny that attempted firing<sup>20</sup>; and sought to curtail the scope of the Special Counsel's investigation.<sup>21</sup> Where, as here, there is substantial evidence indicating that the President engaged in such misconduct, the public interest in the "fair administration of justice" outweighs the President's "generalized interest in confidentiality."<sup>22</sup>

For all these reasons, Mr. McGahn is required to appear and provide testimony before the Committee absent a court order authorizing non-compliance, as well as provide a privilege log for any documents withheld. Otherwise, the Committee will have no choice but to resort to contempt proceedings to ensure that it has access to the information it requires to fulfill its constitutionally mandated duties.

Sincerely,



Jerrold Nadler  
Chairman  
House Committee on the Judiciary

cc: Doug Collins  
Ranking Member  
House Committee on the Judiciary

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<sup>18</sup> Special Counsel Robert S. Mueller III, *Report on the Investigation Into Russian Interference in the 2016 Presidential Election*, Vol. II, at 48-51, 107-11 (hereinafter "Mueller Report").

<sup>19</sup> *Id.* Vol. II, at 77-87.

<sup>20</sup> *Id.* Vol. II, at 90-94.

<sup>21</sup> *Id.* Vol. II, at 113-18.

<sup>22</sup> *United States v. Nixon*, 418 U.S. 683, 713 (1974).

**U.S. House of Representatives**  
**Committee on the Judiciary**

Washington, DC 20515-6216

One Hundred Sixteenth Congress  
May 17, 2019

Donald F. McGahn II, Esq.  
c/o William A. Burck, Esq.  
Quinn Emanuel Urquhart & Sullivan  
1300 I St. NW  
Suite 9000  
Washington, D.C. 20005

Dear Mr. McGahn:

The Committee on the Judiciary will hold a hearing on “Oversight of the Report by Special Counsel Robert S. Mueller, III: Former White House Counsel Donald F. McGahn, II,” on May 21, 2019 at 10:00 a.m., in Room 2141 of the Rayburn House Office Building. As you know, your presence is required pursuant to the subpoena the Committee served on you compelling your testimony for that date.<sup>1</sup>

On May 7, 2019, I wrote to your counsel and made clear that, absent a court order directing otherwise, you must appear or the Committee will proceed to hold you in contempt.<sup>2</sup> We have received no information indicating that any such order has been sought, much less obtained. In fact, the Committee has not even been provided a Department of Justice, Office of Legal Counsel (OLC) opinion articulating a legitimate legal basis that prevents you from providing testimony about the subject matters disclosed in the Special Counsel’s report. This is not surprising given that you have already discussed these subjects at length as part of an investigation for which the President expressly waived privilege, has publicly commented on, and even has disputed not only your account of the relevant events but also your good faith.

As I have previously stated, the Committee intends to focus on the very topics covered in the Special Counsel’s Report. For that reason, there can be no valid assertion of executive privilege given that President Trump “declined to assert any privilege over Mr. McGahn’s testimony,”<sup>3</sup> or over any portion of the Report itself.<sup>4</sup>

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<sup>1</sup> Subpoena by Authority of the House of Representatives of the United States of America to Donald F. McGahn for documents and testimony, signed by Representative Jerrold Nadler, April 22, 2019. Enclosed please find additional information related to your testimony.

<sup>2</sup> Letter to William A. Burck from Chairman Jerrold Nadler (May 7, 2019).

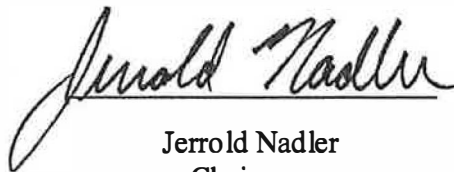
<sup>3</sup> Michael S. Schmidt & Maggie Haberman, *White House Counsel, Don McGahn, Has Cooperated Extensively in Mueller Inquiry*, N.Y. TIMES, Aug. 18, 2018.

<sup>4</sup> *In re Sealed Case*, 121 F.3d 729, 741 (D.C. Cir. 1997) (holding that publication of information “waives [] privileges for the document or information specifically release[d].”).

Moreover, the subject of your testimony is critical to this Committee's ongoing investigative, oversight, and legislative efforts.<sup>5</sup> Since the Committee's last letter, the President on May 11, 2019, tweeted: "I was NOT going to fire Bob Mueller, and did not fire Bob Mueller. . . . Actually, Don McGahn had a much better chance of being fired than Mueller. Never a big fan!" The President's personal attorney, Rudolph Giuliani, likewise previously stated in an interview that your accounting of events "can't be taken at face value" and "could be the product of an inaccurate recollection or could be the product of something else."<sup>6</sup> Your testimony regarding these events—which the President and his counsel now unequivocally dispute—is thus critical to the Committee's ongoing investigation. In addition, the Committee is committed to providing you the opportunity to address the scurrilous allegations by the President and his counsel that you were not truthful or accurate in your interviews with the Special Counsel.

For all these reasons, the Committee looks forward to your testimony on May 21. To be clear, even if the President—supported by an OLC Opinion—invokes executive privilege over your testimony, and you decide to abide by that improper assertion, you are still required under the law and the penalty of contempt to "appear before the Committee to provide testimony, and invoke executive privilege where appropriate."<sup>7</sup>

Sincerely,



Jerrold Nadler  
Chairman  
House Committee on the Judiciary

cc: Doug Collins  
Ranking Member  
House Committee on the Judiciary

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<sup>5</sup> The Committee's need for this information is indisputably of the highest order, including fulfilling its constitutionally mandated legislative and oversight duties relating to election security, and investigating allegations of *Presidential* obstruction of justice. See Resolution Recommending that the House of Representatives Find William P. Barr, Attorney General, U.S. Department of Justice, In Contempt of Congress for Refusal to Comply with a Subpoena Duly Issued by the Committee on the Judiciary, Committee on the Judiciary, House, 116<sup>th</sup> Cong. 1. (2019).

<sup>6</sup> Michael S. Schmidt and Maggie Haberman, *Giuliani Attacks McGahn's Account to Mueller*, N.Y. TIMES, Apr. 19, 2019.

<sup>7</sup> See Mem. Op., *Comm. on Judiciary v. Miers*, No. 08-cv-0409-JDB (D.D.C. Jul. 31, 2008), at 106.

**U.S. House of Representatives**  
**Committee on the Judiciary**

Washington, DC 20515-6216  
One Hundred Sixteenth Congress

May 20, 2019

Donald F. McGahn II, Esq.  
c/o William A. Burck, Esq.  
Quinn Emanuel Urquhart & Sullivan  
1300 I St. NW  
Suite 9000  
Washington, D.C. 20005

Dear Mr. McGahn:

As you know, your presence is required tomorrow morning for a hearing before the Committee on the Judiciary pursuant to a subpoena compelling your testimony.<sup>1</sup> This afternoon, White House Counsel Pat Cipollone informed me that President Trump has ordered you not to testify.<sup>2</sup> President Trump's order—which seeks to block a former official from informing a coequal branch of government about his own misconduct—is unprecedented and, contrary to the letter received from your counsel this evening, does not excuse your obligation to appear before the Committee.

First, although the Justice Department's Office of Legal Counsel (OLC) has produced an opinion purporting to excuse you from testifying, that opinion has no support in relevant case law, and its arguments have been flatly rejected by the courts. As Judge Bates previously explained, the notion that a former White House Counsel is "absolutely immune" from a congressional subpoena has been "virtually foreclosed by the Supreme Court," which held several decades ago that senior White House aides do not enjoy such immunity even from civil damages suits.<sup>3</sup> OLC's most recent opinion—which relies almost entirely on its own prior opinions—offers no persuasive reasoning for distinguishing Judge Bates's ruling or relevant Supreme Court case law.<sup>4</sup>

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<sup>1</sup> Subpoena by Authority of the House of Representatives of the United States of America to Donald F. McGahn for documents and testimony, signed by Representative Jerrold Nadler, April 22, 2019.

<sup>2</sup> Letter to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary from Pat Cipollone, White House Counsel (May 20, 2019).

<sup>3</sup> *Comm. on the Judiciary, U.S. House of Reps. v. Miers*, 558 F. Supp. 2d 53, 100 (D.D.C. 2008) (citing *Harlow v. Fitzgerald*, 457 U.S. 800 (1982)).

<sup>4</sup> See Steven A. Engel, Assistant Attorney General, Office of Legal Counsel, *Testimonial Immunity Before Congress of the Former Counsel to the President* (May 20, 2019) ("Engel Op.").

*Second*, the Justice Department's own longstanding policy is that "executive privilege. . . should not be invoked to conceal evidence of wrongdoing or criminality on the part of executive officers."<sup>5</sup> Tellingly, the Department's opinion ignores that policy entirely. Yet as I have already made clear, the Committee plans to ask you about instances in which the President took actions or ordered you to take actions that may constitute criminal offenses, including obstruction of justice. Despite the Department's apparent efforts to catalogue every instance in which a White House aide has refused to testify before Congress, the Department can cite no example where Congress planned to ask that White House aide about possible crimes committed by the President. Perhaps that is because—until now—no President would have engaged in such a transparent effort to block his own former aides from testifying about the President's misconduct.

*Third*, in addition to the President not asserting executive privilege with respect to your account of the relevant events that was published in the Special Counsel's report, the President himself has already called your credibility into question. He tweeted less than 10 days ago that he "was NOT going to fire Bob Mueller," denying a central event that you described to Special Counsel Mueller under penalty of felony. At the same time, he has asked you to state publicly that he did not engage in obstruction of justice.<sup>6</sup> In attacking your credibility and asking you to make public comments about these events, the President has not only further waived any possible privilege with regard to your testimony; he has also created substantial concerns about acts of witness intimidation and further obstruction of Congress's ongoing investigations. Because these incidents post-date your service as White House Counsel and occurred while you were a private citizen, the Committee is plainly entitled to ask you about them without raising even potential privilege issues.

*Fourth*, nowhere in OLC's 15-page opinion or in Mr. Cipollone's letter to me is there mention of President Trump actually invoking executive privilege. OLC's opinion deals exclusively with your purported "immunity" from testimony and concludes (erroneously) that you are "not legally required to appear and testify."<sup>7</sup> Mr. Cipollone's letter to me reiterates that conclusion and states that "the President has directed Mr. McGahn not to appear" at tomorrow's hearing.<sup>8</sup> But—in marked contrast to the letter sent by the White House to former White House Counsel Harriet Miers (which itself was rejected as improper by the court)—Mr. Cipollone's

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<sup>5</sup> Robert B. Shanks, *Congressional Subpoenas of Department of Justice Investigative Files*, 8 Op. O.L.C. 252, 267 (1984).

<sup>6</sup> Michael S. Schmidt, *White House Asked McGahn to Declare Trump Never Obstructed Justice*, N.Y. Times, May 10, 2019.

<sup>7</sup> Engel Op. at 15.

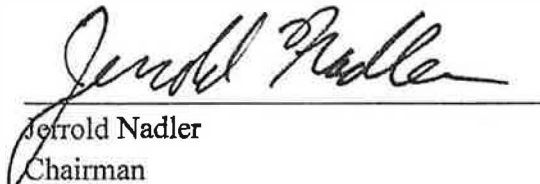
<sup>8</sup> Letter to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary from Pat Cipollone, White House Counsel (May 20, 2019).

letter does not state that President Trump has asserted executive privilege with respect to your testimony, nor could he.<sup>9</sup> At most, the Department's conclusions regarding your "immunity" (even if accepted as correct, which they are not) mean that the decision whether to comply with the Committee's lawful subpoena rests solely in your hands.

*Fifth*, contrary to the reference in your counsel's letter, there has been no suggestion by President Trump or by anyone speaking on his behalf that attorney-client privilege poses an obstacle to your testimony. In fact, any invocation of attorney-client privilege in these circumstances is foreclosed by the D.C. Circuit case law, which makes clear that the privilege is inapplicable with respect to White House attorneys where the investigation relates to criminal wrongdoing.<sup>10</sup>

Finally, the Justice Department has no place informing you about the potential remedies that Congress may pursue in the exercise of its own Article I powers.<sup>11</sup> The Committee has made clear that you risk serious consequences if you do not appear tomorrow. As the district court already held with respect to Ms. Miers, you are "not excused from compliance with the Committee's subpoena by virtue of a claim of executive privilege that may ultimately be made."<sup>12</sup> Instead, you "must appear before the Committee to provide testimony, and invoke executive privilege where appropriate."<sup>13</sup> Should you fail to do so, the Committee is prepared to use all enforcement mechanisms at its disposal.

Sincerely,

  
Jerrold Nadler  
Chairman  
House Committee on the Judiciary

cc: The Hon. Doug Collins  
Ranking Member, House Committee on the Judiciary

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<sup>9</sup> See Letter to George T. Manning, Esq. from Fred F. Fielding, Counsel to the President (July 9, 2007), attached as Exhibit 20 in *Miers*, No. 08-409, 558 F. Supp. 2d 53 (D.D.C); see also *Miers*, 558 F. Supp. 2d at 62 (White House Counsel informed Miers that President Bush "had decided to assert executive privilege over the substance of Ms. Miers's testimony").

<sup>10</sup> *In re Lindsey*, 158 F.3d 1263, 1271-78 (D.C. Cir. 1998).

<sup>11</sup> See Engel Op. at 15

<sup>12</sup> *Miers*, 558 F. Supp. 2d at 106.

<sup>13</sup> *Id.*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit AA**



## SUBPOENA

### BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To Annie Donaldson Talley

You are hereby commanded to be and appear before the  
Committee on the Judiciary

of the House of Representatives of the United States at the place, date, and time specified below.

- ☒ **to produce the things identified on the attached schedule** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: 2138 Rayburn House Office Building, Washington, D.C., 20515

Date: June 4, 2019

Time: 10:00am

- ☒ **to testify at a deposition** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: 2138 Rayburn House Office Building, Washington, D.C., 20515

Date: June 24, 2019 (and continuing until completed)

Time: 10:00am

- ☐ **to testify at a hearing** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

To any authorized staff member or the U.S. Marshals Service

\_\_\_\_\_ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at

the city of Washington, D.C. this 21 day of May, 2019.

Attest:

  
Clerk

  
Chairman or Authorized Member

**PROOF OF SERVICE**

---

Subpoena for

Annie Donaldson Talley

Address Luther Strange & Associates, LLC

850 Shades Creek Parkway, Suite 200, Birmingham, AL 35209

before the Committee on the Judiciary


*U.S. House of Representatives*  
*116th Congress*

Served by (print name) Aaron Hiller

Title Deputy Chief Counsel, House Judiciary Committee

Manner of service Electronic

Date May 21, 2019

Signature of Server 

Address 2138 Rayburn House Office Building

Washington, D.C. 20515

### SCHEDULE

In accordance with the attached Definitions and Instructions, you are hereby required to produce all documents and communications in your possession, custody, or control, referring or relating to:

1. All notes referenced in the Report.
2. Any other documents referenced in the Report.
3. Statements by Michael Flynn to the Federal Bureau of Investigation (FBI) regarding contacts with Sergey Kislyak.
4. The Federal Bureau of Investigation and Department of Justice's (DOJ) investigation of Michael Flynn.
5. Meetings with DOJ officials or employees relating to Michael Flynn and underlying evidence relating to Michael Flynn.
6. The resignation or termination of Michael Flynn.
7. Sean Spicer's February 14, 2017 public statements about Michael Flynn's resignation.
8. President Trump's contacts with James Comey on or about January 27, 2017, February 14, 2017, March 30, 2017, and April 11, 2017.
9. The termination of James Comey, including but not limited to any documents or communications relating to draft termination letters, White House Counsel memoranda, or the May 9, 2017 Rod Rosenstein memorandum to Jeff Sessions entitled "Restoring Public Confidence in the FBI."
10. Meetings or communications involving FBI or DOJ officials or employees relating to the resignation or termination of James Comey.
11. President Trump's statements or communications regarding James Comey in March or April 2017.
12. Jeff Sessions's recusal from any matters arising from the campaigns for President of the United States.
13. Reversing or attempting to reverse Jeff Sessions's recusal from any matters.
14. The resignation or termination, whether contemplated or actual, of (a) Jeff Sessions; (b) Rod Rosenstein; (c) Special Counsel Robert Mueller; (d) Don McGahn.
15. Your resignation or termination, whether contemplated or actual.
16. The appointment of Special Counsel Robert Mueller.
17. Alleged conflicts of interest on the part of Special Counsel Robert Mueller or other employees of the Special Counsel's Office.

18. Public statements and/or requests to correct the record or deny reports that President Trump asked for Special Counsel Robert Mueller to be removed as Special Counsel.
19. Memoranda directing White House officials or employees to avoid direct contact or communication with the Department of Justice or Jeff Sessions.
20. Meetings or communications with Dana Boente or other DOJ officials or employees relating to whether the President was being investigated by either DOJ or the FBI.
21. Meetings or communications with DOJ officials or employees relating to James Comey's testimony before Congress.
22. The President maintaining possession of Jeff Sessions's resignation letter.
23. Communications about Special Counsel Mueller's investigation, including but not limited to whether any action taken, proposed or discussed by President Trump or anyone acting on his behalf may constitute obstruction of justice or any violation of law.
24. McGahn's statement that President Trump's "biggest exposure" was not firing Comey but his "other contacts," "calls," and "ask re Flynn" as mentioned in Volume II, page 82 of the Report.
25. Statements or communications relating to press reports that President Trump was under investigation.
26. Any briefings the White House Counsel's Office received on the status of FBI's investigation of Russian interference in the 2016 election.
27. Paul Manafort's cooperation with the Special Counsel's Office.
28. The June 9, 2016 Trump Tower meeting.
29. The July 8, 2017 statement and related statements released in the name of Donald Trump Jr. regarding the Trump Tower meeting.
30. Prosecuting or investigating James Comey or Hillary Clinton.
31. Presidential pardons, whether possible or actual, for Paul Manafort, Michael Flynn, Michael Cohen, Rick Gates, Roger Stone, individuals associated with the Trump Campaign, or individuals involved in matters before the U.S. Attorney's Office for the Southern District of New York (SDNY).
32. Selecting Jeff Sessions's replacement through a recess appointment or appointing an Acting Attorney General under the Federal Vacancies Reform Act.
33. The SDNY Investigations, the recusal of U.S. Attorney Geoffrey Berman from the SDNY Investigations, or the reassignment or potential reassignment of SDNY employees from the SDNY Investigations.

34. Statements by Michael Cohen or White House officials to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence regarding the timing of the Trump Organization's efforts to develop a property in Moscow, including but not limited to drafts of such statements and communications about such drafts or final statements.
35. Any payment, or potential payment, to any person or entity by Michael Cohen, Essential Consultants LLC, or American Media Inc. ("AMI") for the benefit of Donald Trump or the Trump Campaign, including but not limited to any documents relating to the reimbursement of Cohen, Essential Consultants LLC, or AMI for any such payments, and any documents relating to the omission or inclusion of information about liabilities associated with such payments on Donald Trump's Public Financial Disclosure Reports (OGE Form 278e) filed in 2017 and 2018.
36. Communications relating to United States imposed sanctions or potential sanctions against the Russian Federation from January 1, 2017 to December 31, 2018, including but not limited to the sanctions imposed pursuant to the Magnitsky Act.

**Please note your obligation to provide a full privilege log, as well as identify responsive documents no longer in your possession, as set forth in the Instructions.**

### DEFINITIONS

As used in this subpoena, the following terms shall be interpreted in accordance with these definitions:

1. "And," and "or," shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
2. "Any" includes "all," and "all" includes "any."
3. "Communication(s)" means the transmittal of information by any means, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic message including email, text message, instant message, MMS or SMS message, encrypted message, message application, social media, or otherwise.
4. "Employee" means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
5. "Document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, call records, electronic mail ("e-mail"), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term "document" includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto.
6. "Documents in your possession, custody or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party. **This includes but is not limited to documents that are or were held by your attorneys.**
7. "Each" shall be construed to include "every," and "every" shall be construed to include "each."
8. "Government" shall include any government's present and former agencies, branches, units, divisions, subdivisions, districts, public corporations, employees, elected and appointed officials, ambassadors, diplomats, emissaries, authorities, agents, assignees, and instrumentalities. This

includes, but is not limited to, any government-controlled business entities, entities in which the government has a financial interest, and any person acting or purporting to act on the government's behalf.

9. "Including" shall be construed broadly to mean "including, but not limited to."
10. "Person" or "persons" means natural persons, firms, partnerships, associations, corporations, subsidiaries, division, departments, joint ventures proprietorships, syndicates, or other legal business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units, thereof.
11. "Referenced" means cited, quoted, mentioned, described, contained, incorporated, reproduced, or identified in any manner whatsoever.
12. "Relating to" shall mean discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting, evidencing, constituting, comprising, showing, setting forth, considering, recommending, concerning, or pertinent to that subject in any manner whatsoever.
13. "The Russian Federation" shall include the Government of the Russian Federation, as the term "Government" is defined above.
14. "Special Counsel's Office" means the office created pursuant to Department of Justice Order No. 3915-17 issued by the Acting Attorney General on May 17, 2017 appointing Robert S. Mueller III as Special Counsel, and its employees.
15. "Special Counsel's Investigation" means the investigation conducted by the Special Counsel's Office pursuant to Department of Justice Order No. 3915-17 issued by the Acting Attorney General on May 17, 2017.
16. "SDNY Investigations" shall include any investigation or prosecution conducted by the U.S. Attorney's Office for the Southern District of New York relating to: (i) Michael Cohen; (ii) the Trump Organization; (iii) the Trump Campaign; and (iv) the 58<sup>th</sup> Presidential Inaugural Committee.
17. "The Report" means the complete and unredacted version of the report submitted on or about March 22, 2019 by Special Counsel Robert Mueller, pursuant to his authority under 28 C.F.R. § 600.8(c), entitled, "Report on the Investigation into Russian Interference in the 2016 Presidential Election."
18. "Trump Campaign" for purposes of this subpoena shall include Donald J. Trump for President, Inc., as well as its parent companies, subsidiary companies, affiliated entities, agents, officials, and instrumentalities.
19. The "Trump Organization" for purposes of this subpoena shall include the Trump Organization, Inc., The Trump Organization LLC, and their parent companies, subsidiary companies, affiliated entities, agents, officials, and instrumentalities.

20. The “Trump Tower Meeting” for purposes of this subpoena shall reference the June 9, 2016 Trump Tower meeting attended by the following Donald Trump Jr., Paul Manafort, Kushner, Natalia Veselnitskaya, Rob Goldstone, and Rinat Akhmetshin.



### INSTRUCTIONS

1. In complying with this subpoena, you should produce all responsive documents in unredacted form that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you. If a document is referenced in the Report in part, you should produce it in full in a complete and unredacted form.
2. Documents responsive to the subpoena should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that a document is withheld in full or in part on any basis, including a claim of privilege, you should provide a log containing the following information concerning every such document: (i) the reason the document is not being produced; (ii) the type of document; (iii) the general subject matter; (iv) the date, author, addressee, and any other recipient(s); (v) the relationship of the author and addressee to each other; and (vi) any other description necessary to identify the document and to explain the basis for not producing the document. If a claimed privilege applies to only a portion of any document, that portion only should be withheld and the remainder of the document should be produced. As used herein, "claim of privilege" includes, but is not limited to, any claim that a document either may or must be withheld from production pursuant to any law, statute, rule, policy or regulation.
4. In the event that a document is withheld in full or in part on the basis of a privilege asserted by or on behalf of the White House, or at the request of the White House, please also include the following information in your privilege log:
  - a. The date on which you or any attorney representing you received the document or any copy thereof from the White House, received access to that document from the White House, or removed that document or any copy thereof from the White House;
  - b. The name of the person or persons who provided the document to you or your attorney;
  - c. The name of any lawyer or other agent or third party outside the White House who, to your knowledge, reviewed the document.
  - d. You should log each responsive document as to which you have directed us to the White House, and each document that was previously in your attorneys' possession, custody or control.
5. Any objections or claims of privilege are waived if you fail to provide an explanation of why full compliance is not possible and a log identifying with specificity the ground(s) for withholding each withheld document prior to the request compliance date.
6. In complying with the request, be apprised that (unless otherwise determined by the Committee) the Committee does not recognize: any purported non-disclosure privileges associated with the common law including, but not limited to the deliberative-process privilege, the attorney-client privilege, and attorney work product protections; any purported privileges or protections from disclosure under the Freedom of Information Act; or any purported contractual privileges, such as non-disclosure agreements.

7. Any assertion of any such non-constitutional legal bases for withholding documents or other materials, shall be of no legal force and effect and shall not provide a justification for such withholding or refusal, unless and only to the extent that the Committee has consented to recognize the assertion as valid.
8. Pursuant to 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
9. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
10. If any document responsive to this subpoena was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this subpoena, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party, including, but not limited to (a) how the document was disposed of; (b) the name, current address, and telephone number of the person who currently has possession, custody, or control over the document; (c) the date of disposition; and (d) the name, current address, and telephone number of each person who authorized said disposition or who had or has knowledge of said disposition.
11. If any document responsive to this subpoena cannot be located, describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction or unavailability.
12. In the event that any entity, organization, or individual named in the subpoena has been, or is currently, known by any other name, the subpoena should be read also to include such other names under that alternative identification.
13. All documents should be produced with Bates numbers affixed. The Bates numbers must be unique, sequential, fixed-length numbers and must begin with a prefix referencing the name of the producing party (e.g., ABCD-000001). This format must remain consistent across all productions. The number of digits in the numeric portion of the format should not change in subsequent productions, nor should spaces, hyphens, or other separators be added or deleted. All documents should be Bates-stamped sequentially and produced sequentially.
14. Documents produced pursuant to this subpoena should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this subpoena should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this subpoena was issued. Indicate the office or division and person from whose files each document was produced.
15. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.

16. Produce electronic documents as created or stored electronically in their original electronic format. Documents produced in electronic format should be organized, identified, and indexed electronically, in a manner comparable to the organization structure called for in Instruction 13 above.
17. Data may be produced on CD, DVD, memory stick, USB thumb drive, hard drive, or via secure file transfer, using the media requiring the least number of deliverables. Label all media with the following:
  - a. Production date;
  - b. Bates range;
  - c. Disk number (1 of X), as applicable.
18. If a date or other descriptive detail set forth in this subpoena referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the subpoena, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
19. The subpoena is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. Production sets shall be delivered to the Majority Staff in Room 2138 of the Rayburn House Office Building and the Minority Staff in Room 2142 of the Rayburn House Office Building. You should consult with Committee Majority Staff regarding the method of delivery prior to sending any materials.
21. If compliance with the subpoena cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production. In the event that any responsive documents or other materials contain classified information, please immediately contact Committee staff to discuss how to proceed.
22. Upon completion of the document production, please submit a written certification, signed by you or by counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the subpoena have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's subpoena or in anticipation of receiving the Committee's subpoena, and (3) all documents identified during the search that are responsive have been produced to the Committee, identified in a log provided to the Committee, or otherwise identified as provided herein.
23. A cover letter should be included with each production including the following information:

- a. List of each piece of media (hard drive, thumb drive, DVD or CD) included in the production by the unique number assigned to it, and readily apparent on the physical media;
  - b. List of fields in the order in which they are listed in the metadata load file;
  - c. The paragraph(s) and/or clause(s) in the Committee's subpoena to which each document responds;
  - d. Time zone in which emails were standardized during conversion (email collections only);
  - e. Total page count and bates range for the entire production, including both hard copy and electronic documents.
24. With respect to your production of your notes cited in the Mueller Report, please provide your complete notes taken in connection with each meeting referenced.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit BB**

## SUBPOENA

### BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To Hope Hicks

You are hereby commanded to be and appear before the  
Committee on the Judiciary

of the House of Representatives of the United States at the place, date, and time specified below.

- ☒ **to produce the things identified on the attached schedule** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: 2138 Rayburn House Office Building, Washington, D.C., 20515

Date: June 4, 2019

Time: 10:00am

- ☐ **to testify at a deposition** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: \_\_\_\_\_

Date: \_\_\_\_\_ (and continuing until completed)

Time: \_\_\_\_\_

- ☒ **to testify at a hearing** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: 2138 Rayburn House Office Building, Washington, D.C. 20515

Date: June 19, 2019

Time: 1:00pm

To any authorized staff member or the U.S. Marshals Service


\_\_\_\_\_ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at

the city of Washington, D.C. this 21 day of May, 2019.

Attest:

  
Clerk

  
Chairman or Authorized Member

## PROOF OF SERVICE

---

Subpoena for

Hope Hicks

Address c/o Robert P. Trout, Trout Cacheris & Solomon PLLC

1627 Eye Street NW, Suite 1130, Washington, DC 20006

before the Committee on the Judiciary

*U.S. House of Representatives*  
*116th Congress*


---

Served by (print name) Aaron Hiller

Title Deputy Chief Counsel, House Judiciary Committee

Manner of service Electronic

Date May 21, 2019

Signature of Server 

Address 2138 Rayburn House Office Building

Washington, D.C. 20515

**SCHEDULE**

In accordance with the attached Definitions and Instructions, you are hereby required to produce all documents and communications in your possession, custody, or control, referring or relating to:

1. All notes referenced in the Report.
2. Any other documents referenced in the Report.
3. Statements by Michael Flynn to the Federal Bureau of Investigation (FBI) regarding contacts with Sergey Kislyak.
4. The Federal Bureau of Investigation and Department of Justice's (DOJ) investigation of Michael Flynn.
5. Meetings with DOJ officials or employees relating to Michael Flynn and underlying evidence relating to Michael Flynn.
6. The resignation or termination of Michael Flynn.
7. Sean Spicer's February 14, 2017 public statements about Michael Flynn's resignation.
8. President Trump's contacts with James Comey on or about January 27, 2017, February 14, 2017, March 30, 2017, and April 11, 2017.
9. The termination of James Comey, including but not limited to any documents or communications relating to draft termination letters, White House Counsel memoranda, or the May 9, 2017 Rod Rosenstein memorandum to Jeff Sessions entitled "Restoring Public Confidence in the FBI."
10. Meetings or communications involving FBI or DOJ officials or employees relating to the resignation or termination of James Comey.
11. President Trump's statements or communications regarding James Comey in March or April 2017.
12. Jeff Sessions's recusal from any matters arising from the campaigns for President of the United States.
13. Reversing or attempting to reverse Jeff Sessions's recusal from any matters.
14. The resignation or termination, whether contemplated or actual, of (a) Jeff Sessions; (b) Rod Rosenstein; (c) Special Counsel Robert Mueller; (d) Don McGahn.
15. Your resignation or termination, whether contemplated or actual.
16. The appointment of Special Counsel Robert Mueller.
17. Alleged conflicts of interest on the part of Special Counsel Robert Mueller or other employees of the Special Counsel's Office.



18. Public statements and/or requests to correct the record or deny reports that President Trump asked for Special Counsel Robert Mueller to be removed as Special Counsel.
19. Memoranda directing White House officials or employees to avoid direct contact or communication with the Department of Justice or Jeff Sessions.
20. Meetings or communications with Dana Boente or other DOJ officials or employees relating to whether the President was being investigated by either DOJ or the FBI.
21. Meetings or communications with DOJ officials or employees relating to James Comey's testimony before Congress.
22. The President maintaining possession of Jeff Sessions's resignation letter.
23. Communications about Special Counsel Mueller's investigation, including but not limited to whether any action taken, proposed or discussed by President Trump or anyone acting on his behalf may constitute obstruction of justice or any violation of law.
24. McGahn's statement that President Trump's "biggest exposure" was not firing Comey but his "other contacts," "calls," and "ask re Flynn" as mentioned in Volume II, page 82 of the Report.
25. Statements or communications relating to press reports that President Trump was under investigation.
26. Any briefings the White House Counsel's Office received on the status of FBI's investigation of Russian interference in the 2016 election.
27. Paul Manafort's cooperation with the Special Counsel's Office.
28. The June 9, 2016 Trump Tower meeting.
29. The July 8, 2017 statement and related statements released in the name of Donald Trump Jr. regarding the Trump Tower meeting.
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32. Selecting Jeff Sessions's replacement through a recess appointment or appointing an Acting Attorney General under the Federal Vacancies Reform Act.
33. The SDNY Investigations, the recusal of U.S. Attorney Geoffrey Berman from the SDNY Investigations, or the reassignment or potential reassignment of SDNY employees from the SDNY Investigations.

34. Statements by Michael Cohen or White House officials to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence regarding the timing of the Trump Organization's efforts to develop a property in Moscow, including but not limited to drafts of such statements and communications about such drafts or final statements.
35. Any payment, or potential payment, to any person or entity by Michael Cohen, Essential Consultants LLC, or American Media Inc. ("AMI") for the benefit of Donald Trump or the Trump Campaign, including but not limited to any documents relating to the reimbursement of Cohen, Essential Consultants LLC, or AMI for any such payments, and any documents relating to the omission or inclusion of information about liabilities associated with such payments on Donald Trump's Public Financial Disclosure Reports (OGE Form 278e) filed in 2017 and 2018.
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**Please note your obligation to provide a full privilege log, as well as identify responsive documents no longer in your possession, as set forth in the Instructions.**

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As used in this subpoena, the following terms shall be interpreted in accordance with these definitions:

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2. "Any" includes "all," and "all" includes "any."
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4. "Employee" means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
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  - a. The date on which you or any attorney representing you received the document or any copy thereof from the White House, received access to that document from the White House, or removed that document or any copy thereof from the White House;
  - b. The name of the person or persons who provided the document to you or your attorney;
  - c. The name of any lawyer or other agent or third party outside the White House who, to your knowledge, reviewed the document.
  - d. You should log each responsive document as to which you have directed us to the White House, and each document that was previously in your attorneys' possession, custody or control.
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8. Pursuant to 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
9. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
10. If any document responsive to this subpoena was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this subpoena, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party, including, but not limited to (a) how the document was disposed of; (b) the name, current address, and telephone number of the person who currently has possession, custody, or control over the document; (c) the date of disposition; and (d) the name, current address, and telephone number of each person who authorized said disposition or who had or has knowledge of said disposition.
11. If any document responsive to this subpoena cannot be located, describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction or unavailability.
12. In the event that any entity, organization, or individual named in the subpoena has been, or is currently, known by any other name, the subpoena should be read also to include such other names under that alternative identification.
13. All documents should be produced with Bates numbers affixed. The Bates numbers must be unique, sequential, fixed-length numbers and must begin with a prefix referencing the name of the producing party (e.g., ABCD-000001). This format must remain consistent across all productions. The number of digits in the numeric portion of the format should not change in subsequent productions, nor should spaces, hyphens, or other separators be added or deleted. All documents should be Bates-stamped sequentially and produced sequentially.
14. Documents produced pursuant to this subpoena should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this subpoena should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this subpoena was issued. Indicate the office or division and person from whose files each document was produced.
15. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.

16. Produce electronic documents as created or stored electronically in their original electronic format. Documents produced in electronic format should be organized, identified, and indexed electronically, in a manner comparable to the organization structure called for in Instruction 13 above.
17. Data may be produced on CD, DVD, memory stick, USB thumb drive, hard drive, or via secure file transfer, using the media requiring the least number of deliverables. Label all media with the following:
  - a. Production date;
  - b. Bates range;
  - c. Disk number (1 of X), as applicable.
18. If a date or other descriptive detail set forth in this subpoena referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the subpoena, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
19. The subpoena is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. Production sets shall be delivered to the Majority Staff in Room 2138 of the Rayburn House Office Building and the Minority Staff in Room 2142 of the Rayburn House Office Building. You should consult with Committee Majority Staff regarding the method of delivery prior to sending any materials.
21. If compliance with the subpoena cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production. In the event that any responsive documents or other materials contain classified information, please immediately contact Committee staff to discuss how to proceed.
22. Upon completion of the document production, please submit a written certification, signed by you or by counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the subpoena have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's subpoena or in anticipation of receiving the Committee's subpoena, and (3) all documents identified during the search that are responsive have been produced to the Committee, identified in a log provided to the Committee, or otherwise identified as provided herein.
23. A cover letter should be included with each production including the following information:



- a. List of each piece of media (hard drive, thumb drive, DVD or CD) included in the production by the unique number assigned to it, and readily apparent on the physical media;
  - b. List of fields in the order in which they are listed in the metadata load file;
  - c. The paragraph(s) and/or clause(s) in the Committee's subpoena to which each document responds;
  - d. Time zone in which emails were standardized during conversion (email collections only);
  - e. Total page count and bates range for the entire production, including both hard copy and electronic documents.
24. With respect to your production of your notes cited in the Mueller Report, please provide your complete notes taken in connection with each meeting referenced.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit CC**

THE WHITE HOUSE

WASHINGTON

June 18, 2019

The Honorable Jerrold Nadler  
Chairman  
Committee on the Judiciary  
United States House of Representatives  
Washington, DC 20515

Dear Chairman Nadler:

I write concerning the subpoena issued by the Committee on the Judiciary (the “Committee”) to Hope Hicks on May 21, 2019. The subpoena directs Ms. Hicks to testify before the Committee on Wednesday, June 19, 2019. As you are aware, Ms. Hicks served as a senior adviser to the President in the White House, holding the titles of Assistant to the President and Director of Strategic Communications, as well as Assistant to the President and White House Communications Director. The subpoena appears to seek testimony from Ms. Hicks concerning her service in the White House. As explained below, Ms. Hicks is absolutely immune from being compelled to testify before Congress with respect to matters occurring during her service as a senior adviser to the President.

The Department of Justice (“Department”) has advised me that, with respect to the subpoena issued by the Committee on May 21, 2019, Ms. Hicks is absolutely immune from compelled congressional testimony with respect to matters occurring during her service as a senior adviser to the President. As you know, “[t]he Department has long taken the position—across administrations of both political parties—that ‘the President and his immediate advisers are absolutely immune from testimonial compulsion by a Congressional Committee.’” Letter from Pat A. Cipollone, Counsel to the President, to Rep. Jerrold Nadler (May 20, 2019) (quoting *Immunity of the Former Counsel to the President from Compelled Congressional Testimony*, 31 Op. O.L.C. 191, 191 (2007)); see also, e.g., *Immunity of the Counsel to the President from Compelled Congressional Testimony*, 20 Op. O.L.C. 308, 308 (1996). That immunity arises from the President’s position as head of the Executive Branch and from Ms. Hicks’s former position as a senior adviser to the President. “Subjecting a senior presidential advisor to the congressional subpoena power would be akin to requiring the President himself to appear before Congress on matters relating to the performance of his constitutionally assigned executive functions.” *Assertion of Executive Privilege with Respect to Clemency Decisions*, 23 Op. O.L.C. 1, 5 (1999).

As the Department has recognized, “[w]hile a senior presidential adviser, like other executive officials, could rely on executive privilege to decline to answer specific questions at a hearing, the privilege is insufficient to ameliorate several threats that compelled testimony poses to the independence and candor of executive councils.” Memorandum for Pat A. Cipollone, Counsel to the President, from Steven A. Engel, Assistant Attorney General, Office of Legal Counsel, *Re: Testimonial Immunity Before Congress of the Former Counsel to the President*, 43

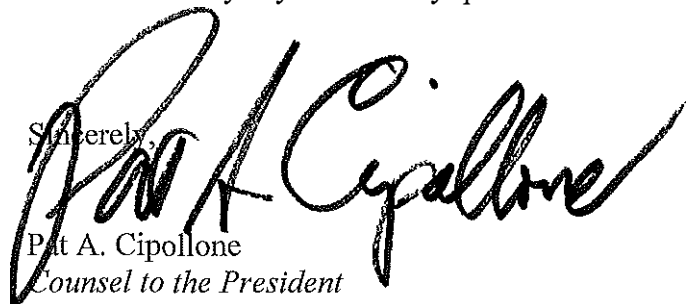
The Honorable Jerrold Nadler  
Page 2

Op. O.L.C. \_\_\_, \*6 (May 20, 2019). “[C]ompelled congressional testimony ‘create[s] an inherent and substantial risk of inadvertent or coerced disclosure of confidential information,’ despite the availability of claims of executive privilege with respect to the specific questions asked during such testimony.” *Id.* (quoting *Immunity of the Assistant to the President and Director of the Office of Political Strategy and Outreach from Congressional Subpoena*, 38 Op. O.L.C. \_\_\_, \*4 (July 15, 2014)). In addition, the threat of compelled interrogation about confidential communications with the President or his senior staff “could chill presidential advisers from providing unpopular advice or from fully examining an issue with the President or others.” *Id.* Finally, given the frequency with which testimony of a senior presidential adviser would fall within the scope of executive privilege, compelling such an adviser’s appearance is unlikely to promote any valid legislative interests. *Id.* at \*6-7.

Because of this constitutional immunity, and in order to protect the prerogatives of the Office of President, the President has directed Ms. Hicks not to answer questions before the Committee relating to the time of her service as a senior adviser to the President. The long-standing principle of immunity for senior advisers to the President is firmly rooted in the Constitution’s separation of powers and protects the core functions of the Presidency, and we are adhering to this well-established precedent in order to ensure that future Presidents can effectively execute the responsibilities of the Office of President. It is our understanding that Ms. Hicks’s limited testimony before the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence was not inconsistent with this principle of immunity.

We recognize the Committee has also expressed an interest in questioning Ms. Hicks about her time working for the President-elect during the presidential transition. Much of Ms. Hicks’s work during this period involved discussions with the President-elect and his staff relating to the decisions the President-elect would be making once he assumed office. Accordingly, her responses to specific questions about this period would likely implicate executive branch confidentiality interests concerning that decisionmaking process. In order to preserve the President’s ability to assert executive privilege over such information, a member of my office will attend Ms. Hicks’s testimony on June 19.

Finally, I note that the Committee and the Department are engaged in an ongoing accommodation process, and that accommodation process may resolve the Committee’s requests for information. Please do not hesitate to contact me directly if you have any questions or would like to discuss this matter further.

Sincerely,  
  
Pat A. Cipollone  
Counsel to the President

cc: The Honorable Doug Collins, Ranking Member

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit DD**

**THE WHITE HOUSE**

WASHINGTON

June 4, 2019

The Honorable Jerrold Nadler  
Chairman  
Committee on the Judiciary  
United States House of Representatives  
Washington, DC 20515

Dear Chairman Nadler:

I write in reference to subpoenas issued by the Committee on the Judiciary (the “Committee”) on May 21, 2019 to Annie Donaldson Talley and Hope Hicks, which request the production of documents by 10:00 a.m. on Tuesday, June 4.

The subpoenas seek documents related to matters that were subjects of the investigation conducted by Special Counsel Robert S. Mueller, III. Those documents include White House records that remain legally protected from disclosure under longstanding constitutional principles, because they implicate significant Executive Branch confidentiality interests and executive privilege. Because Ms. Talley and Ms. Hicks do not have the legal right to disclose the White House records to third parties, I would ask that the Committee direct any request for such records to the White House, the appropriate legal custodian.

As part of the same investigation, the Committee issued a subpoena to Attorney General William P. Barr on May 1, 2019, essentially seeking access to all information developed by the Special Counsel in the course of his investigation. We understand that the Committee recently proposed to narrow that subpoena to address the materials of the greatest interest to its investigation, and that the Department of Justice (“Department”) has indicated a willingness to discuss a process by which the Department could accommodate the Committee’s requests, in a manner consistent with the law and the confidentiality interests of the Executive Branch. We hope that these discussions between the Committee and the Department will result in a reasonable accommodation of the Committee’s requests and the Executive Branch’s confidentiality interests.

Because the outcome of the negotiations between the Committee and the Department may potentially resolve this matter, we suggest deferring any discussions, if necessary, with the White House until the accommodation process with the Department is complete. Needless to say, the White House records at issue involve significant Executive Branch confidentiality interests, and the ongoing accommodation process with the Department may satisfy the Committee’s informational needs. Accordingly, Acting Chief of Staff to the President Mick Mulvaney has directed Ms. Talley and Ms. Hicks not to produce documents in response to the Committee’s May 21 subpoenas that relate in any way to the White House. The Department is aware of and concurs with this legal position.

The Honorable Jerrold Nadler

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Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, reading "Pat A. Cipollone". The signature is written in a cursive, flowing style. The "P" is large and loops around the "A". The "Cipollone" part is also cursive and ends with a long, sweeping tail that extends to the right.

Pat A. Cipollone  
*Counsel to the President*

cc: The Honorable Doug Collins, Ranking Member

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit EE**



COMMITTEE ON THE JUDICIARY,  
U.S. HOUSE OF REPRESENTATIVES,  
WASHINGTON, D.C.

INTERVIEW OF: HOPE HICKS

Wednesday, June 19, 2019

Washington, D.C.

The interview in the above matter was held in Room 2237,  
Rayburn House Office Building, commencing at 9:02 a.m.

Members Present: Representatives Nadler, Lofgren, Jackson

Lee, Cohen, Johnson of Georgia, Deutch, Bass, Cicilline, Swalwell, Lieu, Raskin, Jayapal, Demings, Correa, Scanlon, Garcia, Neguse, McBath, Stanton, Dean, Mucarsel-Powell, Escobar, Collins, Chabot, Gohmert, Jordan, Ratcliffe, Gaetz, Biggs, McClintock, Lesko, Armstrong, and Steube.

Chairman Nadler. Good morning. Let's go on the record.

This is a transcribed interview of Ms. Hope Hicks, former communications director for the White House. I requested this interview as part of our investigation into allegations of corruption and abuse of power and other misconduct by the Trump administration.

Would the witness please state her name and position in the White House for the record?

Ms. Hicks. My name is Hope Hicks, and I was the communications director at the White House.

Chairman Nadler. I wish to thank you for appearing here today. I appreciate your willingness to appear voluntarily.

Most committees encourage witnesses who appear for a transcribed interview to freely consult with counsel if they so choose, and you are appearing today with private counsel.

Could counsel please state your name and current position for the record?

Mr. Trout. Yes. My name is Robert Trout. I'm with the firm of Trout Cacheris & Solomon in Washington, D.C., and I'm representing Ms. Hicks.

Ms. Solomon. Gloria Solomon, also with Trout Cacheris & Solomon, also representing Ms. Hicks.

Chairman Nadler. Thank you. I note that you are also appearing today with representatives from the White House Counsel's Office.

Could those counsels please state their names and current positions for the record?

Mr. Purpura. Mr. Chairman, Michael Purpura, deputy counsel to the President.

Mr. Philbin. And Patrick Philbin, deputy counsel to the President.

Chairman Nadler. Thank you.

You are also appearing today with representatives from the Department of Justice's Office of Legal Counsel. I note that the committee does not typically permit agency counsel to be present in a transcribed interview involving nonagency employees. However, in the interest of accommodating both the witness and the White House an exception is being made in this one case, and the Department's presence is permitted.

Could those counsels please state their names and current positions for the record?

Mr. Gannon. Thank you, Mr. Chairman. Curtis Gannon, principal deputy assistant attorney general.

Chairman Nadler. That's the only one? Okay.

Thank you.

I am Jerrold Nadler, chairman of the House Judiciary Committee. I am joined today by several members of the committee as well as by counsel for the committee. I will now ask everyone else from the committee who is present to introduce themselves, starting with the members.

Ms. Scanlon. Mary Gay Scanlon, vice chair of the Judiciary Committee.

Ms. Dean. Madeleine Dean, a member from Pennsylvania's Fourth Congressional District.

Mr. Neguse. Joe Neguse, Colorado's Second Congressional District.

Ms. Garcia. Sylvia Garcia, Texas 29, the Houston area.

Ms. Escobar. Veronica Escobar, El Paso.

Mr. Gohmert. Louie Gohmert, Texas.

Mr. Deutch. I'm Ted Deutch from Florida.

Mrs. McBath. Lucy McBath, Georgia's Sixth.

Mr. Lieu. Ted Lieu, southern California.

Ms. Jayapal. Pramila Jayapal, Washington's Seventh.

Mrs. Demings. Val Demings, Florida.

Ms. Mucarsel-Powell. Debbie Mucarsel-Powell, Florida.

Mr. Gaetz. Matt Gaetz, Florida.

Mr. Armstrong. Kelly Armstrong, North Dakota.

Mr. Collins. Doug Collins, Georgia.

Chairman Nadler. Our ranking member.

And other people in the room from the committee not members should identify themselves now.

Mr. Eisen. Norman Eisen for the majority committee.

Ms. Hariharan. Arya Hariharan, majority staff.

Mr. Berke. Barry Berke, the majority staff.

Ms. McElvein. Elizabeth McElvein, majority staff.

Mr. Gayle. Charlie Gayle, majority staff.

Ms. Istel. Sarah Istel, majority staff.

Chairman Nadler. Anybody else?

Mr. Hiller. Aaron Hiller, majority staff.

Mr. Morgan. Matt Morgan, majority staff.

Chairman Nadler. Anybody from the minority staff?

Mr. Parmiter. Robert Parmiter, minority staff.

Mr. Stewart. Brice Stewart, minority staff.

Mr. Johnson. Danny Johnson, minority staff.

Mr. Greenberg. Jacob Greenberg, minority staff.

Mr. Davis. Carlton Davis with Mr. Collins.

Ms. Barker. Erica Barker, minority staff.

Mr. Ferro. Jon Ferro, minority staff.

Chairman Nadler. Okay. And we've been joined by Mr. Cohen of Tennessee and also Mr. Biggs of Arizona. And Ms. Hicks and her counsel have already identified themselves.

The Federal Rules of Civil Procedure do not apply in this setting, but there are some guidelines that we follow that I will now go over.

Our questioning will proceed in rounds. The majority will ask questions first for an hour, and then the minority will have an opportunity to ask questions for an equal period of time if they choose. We will go back and forth in this manner until there are no more questions and the interview is over.

Typically we take a short break at the end of each hour of

questioning, but if you would like to take a break apart from that, please let us know. We will also take a break for lunch at the appropriate point, some appropriate point.

As you can see, there is an official reporter taking down everything we say to make a written record, so we ask that you give verbal responses to all questions. Do you understand that?

Ms. Hicks. Yes, sir.

Chairman Nadler. Thank you.

So that the reporter can take down a clear record, we will do our best to limit the number of members and staff directing questions at you during any given hour. It is important that we do not talk over one another or interrupt each other and that goes for everybody present at today's interview.

We want you to answer our questions in the most complete and truthful manner possible, so we will take out time. If you have any questions or if you do not understand one of our questions, please let us know. And if you honestly do not know the answer to a question or do not remember it, it's best not to guess. Just give us your best recollection.

It is okay to tell us if you learned information from someone else. Just indicate how you came to know that information. If there are things you do not know or cannot remember, just say so, and please inform us who, to the best of your knowledge, might be able to provide a more complete answer to the question.

Ms. Hicks, you should also understand that although this

interview is not under oath you are required by law to answer questions from Congress truthfully. I assume you understand that?

Ms. Hicks. Yes, sir.

Chairman Nadler. This applies also to questions posed by congressional staff as well, and I assume you understand that as well?

Ms. Hicks. Yes, sir.

Chairman Nadler. Witnesses who knowingly provide false testimony could be subject to criminal prosecution for perjury or for making false statements. Do you understand that?

Ms. Hicks. Yes, sir.

Chairman Nadler. Is there any reason you are unable to provide truthful answers to today's questions?

Ms. Hicks. No, sir.

Chairman Nadler. As part of the accommodations process surrounding the May 21st, 2019, subpoena served on Ms. Hicks by the Judiciary Committee, she has agreed to voluntarily appear for a transcribed interview, and the committee has agreed that her appearance satisfies her testimonial obligation under the May 21st, 2019, subpoena.

Ms. Hicks, through her counsel and the committee, have agreed that any disputes regarding privilege assertions or other objections will be treated as if they occurred during testimony compelled by the May 21st, 2019, subpoena.



Finally, I would like to read from our protocols for transcribed interviews recently agreed to by Ranking Member Collins, quote: To encourage candid testimony by the witnesses, transcribed interviews will be conducted in a confidential, closed-door setting. Members and committee staff should endeavor to maintain confidentiality regarding the substance of the testimony.

At the appropriate time, in consultation with the ranking member, the committee will release the transcript of this interview. We anticipate that in the next 48 hours, as soon as we can do that.

Between now and then, I will ask everybody present to conduct themselves with the appropriate discretion before we release the transcript in the next couple days.

Do you have any questions before we begin?

Ms. Hicks. No, sir.

Chairman Nadler. Very well. The time is now 9:09, and our first hour of questioning will begin.

Ms. Hicks, who is Corey Lewandowski?

Ms. Hicks. He was Mr. Trump's campaign manager from January 2015 to June 2016.

Chairman Nadler. And when and where did you meet him?

Ms. Hicks. I believe I met him traveling from New York to Iowa -- sorry, is that better? -- I believe I met him traveling from New York to Iowa, January 24, 2015.

Chairman Nadler. And how often did you interact with Mr. Lewandowski during the campaign?

Ms. Hicks. Every day.

Chairman Nadler. And what about during the transition?

Ms. Hicks. We probably spoke frequently.

Chairman Nadler. Does that mean daily? Weekly?

Ms. Hicks. Probably daily.

Chairman Nadler. Okay. Can you describe the relationship between Lewandowski and the President during the campaign?

Ms. Hicks. As I said, Corey was his campaign manager. Is there any other specifics you're looking for?

Chairman Nadler. Well, were they friendly? Were they antagonistic?

Ms. Hicks. They had a close relationship.

Chairman Nadler. Okay. And the same question, what about during the transition?

Ms. Hicks. I believe they maintained a close relationship.

Chairman Nadler. Did there come a time when that relationship changed?

Ms. Hicks. Not that I'm aware of.

Chairman Nadler. Okay. After Trump was elected, was Mr. Lewandowski hired to work on the transition in any capacity?

Ms. Hicks. Not that I'm aware of.

Chairman Nadler. And what about after the President took office? Was Mr. Lewandowski hired as an executive branch

official?

Mr. Purpura. Objection. Mr. Chairman, I --

Chairman Nadler. It's a matter of public record. Why would you object?

Mr. Purpura. Mr. Chairman, as we explained in Mr. Cipollone's letter yesterday, as a matter of longstanding executive branch precedent in the Department of Justice practice and advice, as a former senior adviser to the President, Ms. Hicks may not be compelled to speak about events that occurred during her service as a senior adviser to the President. That question touched upon that area.

Chairman Nadler. With all due respect, that is absolute nonsense as a matter of law.

Are you asserting any other basis for declining to answer the question --

Mr. Purpura. No, Mr. Chairman.

Chairman Nadler. -- besides absolute immunity, which the gentleman just said?

Ms. Hicks. No, sir.

Chairman Nadler. No, sir.

Are you asserting any privileges in declining to answer the question?

Mr. Purpura. We are not, Mr. Chairman.

Chairman Nadler. Ms. Lewandowski?

Ms. Hicks. As a former senior adviser to the President, I'm

following the instructions from the White House.

Chairman Nadler. No, no, I asked are you asserting any specific privilege, like executive privilege or anything else, or are you just simply asserting the absolute immunity that Mr. Purpura just announced?

Mr. Trout. Mr. Chairman, if I could say. She is not in a position to -- she's not a government employee, and she's not in a position to exercise any privilege, so she is --

Chairman Nadler. So she is not asserting?

Mr. Trout. She is not asserting privilege. It's not her privilege to assert. And so she is simply following the guidance of the White House.

Chairman Nadler. So she is not asserting any privileges. She's not asserting executive privilege.

Okay. So let me make it clear. You are declining to answer the question?

Ms. Hicks. Yes, sir.

Chairman Nadler. This committee, as I said a moment ago, disagrees on the question on the applicability of absolute immunity. The witness must answer questions or assert privileges on a question-by-question basis. This assertion of absolute immunity is improper.

How often did you communicate with or meet with Mr. Lewandowski after he left the Trump campaign?

Ms. Hicks. Communicated regularly, met with very

infrequently.

Chairman Nadler. When you say regularly, once a week? Once a month? I mean --

Ms. Hicks. No. Probably daily.

Chairman Nadler. Probably daily. Were these communications or meetings related to official matters of the Trump administration?

Mr. Purpura. Objection.

Chairman Nadler. Overruled.

Mr. Purpura. Again, same direction as explained in Mr. Cipollone's letter. And with the chairman's permission, I would like to have Mr. Cipollone's letter marked as an exhibit and entered into the record.

Chairman Nadler. Do we have a copy of it?

Mr. Purpura. We have copies, Mr. Chairman.

Chairman Nadler. Then Mr. Cipollone's letter will be entered into the record, I suppose.

[Hicks Exhibit No. 1

Was marked for identification.]

Mr. Purpura. Thank you, Mr. Chairman.

Chairman Nadler. But the question doesn't seem to ask about the administration. I'm asking about her communications. Were they related to official matters of the administration? That would not seem to fall under your --

Mr. Philbin. Mr. Chairman, with all due respect, whether

they were related to her official duties, that's within the immunity.

Chairman Nadler. All right. Well, these communications were made -- after Mr. Lewandowski left the campaign, you said you had regular communications with him. Does that include during the transition period?

Ms. Hicks. Yes.

Chairman Nadler. The Mueller report describes Corey Lewandowski as, quote, a devotee, unquote, of the President, finding that he was, quote, close, unquote, to the President. Is that an accurate description of Trump's -- of the President's relationship with Lewandowski during the campaign?

Ms. Hicks. Yes.

Chairman Nadler. And is that an accurate description of their relationship right after the election?

Ms. Hicks. Yes.

Chairman Nadler. And are you aware of any instance in which the President described Mr. Lewandowski as a surrogate for his administration?

Ms. Hicks. I'm not aware of him describing him that way.

Chairman Nadler. Okay. Did you -- I'm sorry. Did anyone else call Mr. Lewandowski, that you're aware of, did anyone else that you're aware of call Mr. Lewandowski that or something similar?

Ms. Hicks. I guess I would have to understand what capacity

he would be -- that the term "surrogate" is being used in. As in media appearances or elsewhere?

Chairman Nadler. No. Well, media appearances would be one aspect, but I would --

Ms. Hicks. So, yes, he was, I would say, a devoted surrogate in terms of his media appearances. Other than that, no, I've never heard anybody use that term to describe him.

Chairman Nadler. Okay. He's a surrogate in media, yes, and anything else, no?

Ms. Hicks. Correct.

Chairman Nadler. And to the best of your knowledge, did Mr. Lewandowski consider himself a surrogate of the President?

Ms. Hicks. I don't know. That's something you would have to ask him.

Chairman Nadler. And since leaving your official position in the White House, have you communicated or met with Mr. Lewandowski?

Ms. Hicks. Never.

Chairman Nadler. Okay. I'd like to focus now on a specific incident in June 2017. You were still employed in the White House at that time. Is that correct?

Ms. Hicks. Yes, sir.

Chairman Nadler. During that time, where in the West Wing did you sit in relation to the Oval Office?

Mr. Purpura. I'm going to object here, Mr. Chairman. Again,

this talks about --

Chairman Nadler. And I'll ask what privilege is being asserted to object to that question other than the nonexistent Presidential -- general immunity or whatever you call it?

Mr. Purpura. Mr. Chairman, I understand you disagree with the position and the advice provided by the Department of Justice that's gone back quite a while and has been used by administrations in both parties.

Chairman Nadler. I'm not going to debate it. It's nonsense, but we'll --

Mr. Purpura. I understand, Mr. Chairman.

Chairman Nadler. I think we'll win in court on that one, but there's no point in wasting time on that now.

Mr. Purpura. I understand.

Chairman Nadler. I'm asking, are you asserting any other privilege?

Ms. Hicks. No.

Chairman Nadler. Okay. Now, are you asserting any other basis than so-called absolute immunity for declining to answer the question?

Ms. Hicks. No.

Chairman Nadler. Thank you. And remember, you can't shake. You have to speak.

Ms. Hicks. Yes, sir.

Chairman Nadler. Are you asserting any privileges in



declining to answer the question?

Ms. Hicks. No.

Chairman Nadler. Are you asserting executive privilege in declining to answer the question?

Ms. Hicks. No.

Chairman Nadler. Will you provide any details about this matter so that the committee can assess the applicability of privileges?

Mr. Trout. Mr. Chairman, she'll answer whatever questions that the -- that are not objected to by the White House and the executive branch.

Chairman Nadler. Okay. I think that answers the next -- I should ask you the same questions, I am told. As her attorney, are you asserting any other basis for declining to answer the question?

Mr. Trout. So, Mr. Chairman, I do not represent the White House or the executive branch, and it's not my role to assert on behalf of the White House or the executive branch executive or any other privilege.

Chairman Nadler. Is your client asserting any other basis for declining to answer the question?

Mr. Trout. No.

Chairman Nadler. Is your client asserting any privileges in declining to answer the question?

Mr. Trout. No.

Chairman Nadler. Is your client asserting executive privilege in declining to answer the question?

Mr. Trout. No.

Chairman Nadler. Now, Mr. Purpura, on behalf of the White House, are you asserting any other basis for declining to answer the question other than absolute immunity?

Mr. Purpura. No. As explained in Mr. Cipollone's letter, that's the only basis.

Chairman Nadler. Are you asserting -- we have Mr. Cipollone's letter. Are you asserting any privileges in declining to answer the question?

Mr. Purpura. Not at this time.

Chairman Nadler. Are you asserting executive privilege in declining to answer the question?

Mr. Purpura. Not at this time.

Chairman Nadler. Okay. Will you --

Mr. Trout. Mr. Chairman, on behalf of Ms. Hicks, yesterday afternoon I did send a letter to you and to the minority, and I would like that letter to be part of the record.

Chairman Nadler. Do we have that letter?

Ms. Istel. Yes.

Chairman Nadler. It will be inserted into the record.

[Hicks Exhibit No. 2

Was marked for identification.]

Mr. Trout. Thank you.

Chairman Nadler. Now, I will insert our letter dated June 18th, which is yesterday, in reply to Mr. Cipollone's letter rejecting absolute immunity. And I'll have this entered into the record, too.

[Hicks Exhibit No. 3

Was marked for identification.]

Chairman Nadler. So did Mr. Lewandowski visit President Trump at the White House after January 2017?

Mr. Purpura. Objection.

Chairman Nadler. Objection.

Do you recall Corey Lewandowski meeting with President Trump on or around June 19th, 2017?

Mr. Purpura. Objection.

Chairman Nadler. I'd like now to introduce as our next exhibit, whatever the number is, page 90 of volume 2 of the report. Do we have that?

[Hicks Exhibit No. 4

Was marked for identification.]

Ms. Istel. Yes.

Chairman Nadler. Could you -- can you please, Ms. Hicks, read aloud -- read out loud the highlighted portion from that page? Page 91.

Mr. Philbin. Mr. Chairman, if copies are being distributed, may we have a copy? Thank you.

Ms. Hicks. During the June 19th meeting, Lewandowski

recalled that after some small talk the President brought up Sessions and criticized his recusal from the Russia investigation. The President told Lewandowski that Sessions was weak and that if the President had known about the likelihood of recusal in advance, he would not have appointed Sessions.

The President then asked Lewandowski to deliver a message to Sessions and said, write this down. That was the first time the President had asked Lewandowski to take dictation, and Lewandowski wrote as fast as possible to make sure he captured the content correctly.

Mr. Philbin. I'm sorry. We've been given the wrong page.

Chairman Nadler. Ms. Lewandowski -- sorry -- Ms. Hicks, read the next two sentences also if you have it.

Ms. Hicks. Sure. The President directed that Sessions should give a speech publicly announcing -- the dictated message went on to state.

Mr. Trout. So this is -- to be clear, this is page 91, and I'm not sure which volume we're talking about.

Chairman Nadler. Volume two.

Ms. Istel. Volume two.

Chairman Nadler. I think everything -- okay.

Are you familiar with the events described in that excerpt from the special counsel's report that you just read?

Mr. Purpura. Objection.

Chairman Nadler. And you are objecting on what basis, sir?

Mr. Purpura. The same basis that would call for her knowledge of events that occurred during her time as senior adviser to the White House.

Chairman Nadler. In other words, you are asserting absolute immunity that she cannot testify as to any knowledge of anything that occurred after the President was inaugurated?

Mr. Purpura. During her time as adviser to the President she cannot be --

Chairman Nadler. She cannot refer to anything -- your contention is that as a result of absolute immunity she cannot state anything about her knowledge of anything during the period of time in which she was employed in the White House?

Mr. Purpura. For the purpose of this hearing, yes.

Chairman Nadler. Okay. When Mr. Lewandowski visited the White House on June 19th, 2017, he was not an employee of the White House or the administration, correct?

Mr. Purpura. Objection.

Chairman Nadler. That's a matter of public knowledge. It has nothing to do with whether she was a member -- a White House staff person or not. She would know that in any event, so it should not be covered by this.

Mr. Purpura. Under the terms of the absolute immunity described in Mr. Cipollone's letter, she may not speak about anything that occurred during the time of her employment in the White House as a close adviser to the President.

Chairman Nadler. Anything that occurred during that time?

Mr. Purpura. During her service as close adviser to the President.

Chairman Nadler. Did a war break out between Israel and Egypt during that time period?

Mr. Purpura. Same objection.

Chairman Nadler. Same objection.

Well, I'll ask these questions for the record so you can object for the record.

Do you recall if you knew why Mr. Lewandowski was at the White House that day?

Mr. Purpura. Objection.

Chairman Nadler. Were you present for any portion of that meeting?

Mr. Purpura. Objection.

Chairman Nadler. Do you know if anyone else was present for any portions of that meeting?

Mr. Purpura. Objection.

Chairman Nadler. Have you discussed that meeting with anyone -- do you know if anyone else was present for any portion of that meeting?

Mr. Purpura. Objection.

Chairman Nadler. Have you discussed that meeting with anyone outside of the White House?

Mr. Purpura. Objection.

Chairman Nadler. Well, that could happen after she left the White House.

Have you discussed that meeting with anyone outside of the White House?

Mr. Purpura. Objection to the extent that it did not occur during her time as an official -- close adviser to the President.

Mr. Trout. Mr. Chairman, I would object to any questions -- conversations she may have had with her counsel.

Chairman Nadler. I'm sorry? Oh, with her counsel. Aside from that.

Mr. Trout. I don't know whether --

Chairman Nadler. Have you discussed that meeting with anyone other than your counsel outside of the White House since you left the White House?

Ms. Hicks. No, sir.

Chairman Nadler. Okay. And you haven't discussed it with the special counsel?

Mr. Trout. You can answer.

Mr. Purpura. Again, Mr. Chairman, after -- from the time when she was not a close adviser to the President.

Chairman Nadler. Okay. With your -- you don't have to repeat the whole thing every time. With your personal attorneys, same objection? Oh. Go ahead.

Mr. Philbin. I believe Mr. Trout objected to that.

Mr. Trout. Mr. Chairman, I do not want her and I would

instruct her not to answer any questions about her conversations with her personal counsel.

Chairman Nadler. Okay. Fair enough.

Did you discuss that meeting with Mr. Lewandowski?

Mr. Philbin. The same objection, Mr. Chairman, finding various ways to probe about getting into the events in the White House during the time that she was a senior adviser.

Chairman Nadler. I think if she -- it wouldn't be within the scope of your objection if she discuss -- answering yes or no with respect to whether she discussed this with Mr. Lewandowski after she left the White House. The substance of the conversation might be a different question, but whether she --

Mr. Purpura. That's fine. Answer.

Ms. Hicks. As I said earlier, I have not spoken to Mr. Lewandowski since then at the White House.

Chairman Nadler. With anyone else?

Ms. Hicks. I already answered that question.

Chairman Nadler. Have you -- well, have you discussed that meeting with anyone else since you left the White House?

Ms. Hicks. Again, no.

Chairman Nadler. Okay.

Do you recall at some point learning about a specific script that on June 19th, 2019, the President asked Mr. Lewandowski to deliver to then Attorney General Jeff Sessions?

Mr. Purpura. Objection.



Chairman Nadler. Same basis?

Mr. Purpura. Yes.

Chairman Nadler. Please take a moment to review the second highlighted portion of the exhibit. Would you read it out loud, please?

Ms. Hicks. I note that I recused myself from certain things having to do with specific areas, but our President of the United States is being treated very unfairly. He shouldn't have a special prosecutor-slash-counsel because he hasn't done anything wrong. I was on the campaign with him for 9 months. There were no Russians involved with him. I know it for a fact because I was there. He didn't do anything wrong except he ran the greatest campaign in American history.

Now a group of people want to subvert the Constitution of the United States. I'm going to meet with the special prosecutor to explain this is very unfair and let the special prosecutor move forward with investigating election meddling for future elections so that nothing can happen in future elections.

Chairman Nadler. Yeah. Ms. Lewandowski, I think, in reading this --

Ms. Hicks. My name is Ms. Hicks.

Chairman Nadler. I'm sorry, Ms. Hicks. I'm preoccupied.

I think in reading this you skipped the first sentence, which reads: The President directed that Sessions should give a speech publicly announcing --

Ms. Hicks. Sorry. There wasn't an indication that I was supposed to read that.

The President directed that Sessions should give a speech publicly announcing the portion I just read.

Chairman Nadler. Okay. Does that refresh your recollection?

Ms. Hicks. No.

Chairman Nadler. After the June 19th meeting, did you see the President?

Mr. Purpura. Objection.

Chairman Nadler. Can you describe his reaction to that meeting?

Mr. Purpura. Objection.

Chairman Nadler. Did you at any point discuss with the President any of the matters raised during the meeting?

Mr. Purpura. Objection.

Chairman Nadler. Did the President at any point ever tell you he dictated that message to Mr. Lewandowski?

Mr. Purpura. Objection.

Chairman Nadler. According to the report, the President told Mr. Lewandowski to tell Sessions that if Sessions delivered that statement, he would be the, quote, most popular guy in the country, unquote, from volume 292 -- page 92 of the Mueller report.

Did the President tell you he said that?

Mr. Purpura. Objection.

Chairman Nadler. Did Lewandowski tell you the President told him that?

Mr. Purpura. Objection.

Chairman Nadler. After -- and let me state for the record, again, that all these objections are not based on any assertion of privilege but on the claim of so-called absolute immunity, correct?

Mr. Purpura. Yes, Mr. Chairman.

Chairman Nadler. All right. Where were we?

After the June 19th meeting, did you at any point discuss with Mr. Lewandowski any of the matters raised during the meeting?

Mr. Purpura. Objection.

Chairman Nadler. Did Mr. Lewandowski express any concerns coming out of that meeting?

Mr. Purpura. Objection.

Chairman Nadler. Please describe anything else Mr. Lewandowski said about the June 19th meeting.

Mr. Purpura. Objection.

Chairman Nadler. Do you recall when the next time Mr. Lewandowski came to the White House was?

Mr. Purpura. Objection.

Chairman Nadler. I'd like to introduce into the record page 93 and page 94 of volume two, including footnote 625, as the next exhibit.

[Hicks Exhibit No. 5]

Was marked for identification.]

Chairman Nadler. And can you please read out loud the highlighted portion into the record?

Ms. Hicks. Immediately following the meeting with the President, Lewandowski --

Chairman Nadler. You skipped the first sentence.

Ms. Hicks. It's --

Chairman Nadler. Oh, okay. I'm sorry. Go ahead.

Ms. Hicks. Immediately following the meeting with the President, Lewandowski saw Dearborn in the anteroom outside the Oval Office and gave him a typewritten version of the message the President had dictated to be delivered to Sessions. Lewandowski said he asked Hope Hicks to type the notes when he went into the Oval Office and then retrieved the notes from her partway through the meeting with the President.

Chairman Nadler. Is the account that Mr. Lewandowski gave the special counsel quoted here about asking you to type up his notes from his June 19th meeting accurate?

Mr. Purpura. Objection.

Chairman Nadler. You object even though this is recounted in the special counsel's report?

Mr. Purpura. I object, Mr. Chairman, respectfully to -- the question asked her to characterize whether it was accurate, which would then cause her to talk about things she witnessed and observed during her time as a close adviser to the President.

Chairman Nadler. Do you recall if you knew why Mr. Lewandowski was at the White House that day?

Mr. Purpura. Objection.

Chairman Nadler. And when did you first learn of the meeting?

Mr. Purpura. Objection.

Chairman Nadler. Were you present for any portion of the July 19th meeting?

Mr. Purpura. Objection.

Chairman Nadler. Was anyone else present for the meeting between Lewandowski and the President?

Mr. Purpura. Objection.

Chairman Nadler. To the best of your recollection, please describe exactly what Mr. Lewandowski said to you when he handed you these notes?

Mr. Purpura. Objection.

Chairman Nadler. Do you recall what Mr. Lewandowski's notes said or generally what they were about?

Mr. Purpura. Objection.

Chairman Nadler. To the best of your recollection, did the special counsel's report accurately describe what Mr. Lewandowski asked you to type up?

Mr. Purpura. Objection.

Chairman Nadler. Where did you type the notes?

Mr. Purpura. Objection.

Chairman Nadler. Was anyone else present when Mr. Lewandowski handed you the notes?

Mr. Purpura. Objection.

Chairman Nadler. After you typed the notes, did you give it back to Mr. Lewandowski?

Mr. Purpura. Objection.

Chairman Nadler. Did he say anything to you during that exchange?

Mr. Purpura. Objection.

Chairman Nadler. Did he then return to the meeting with the President?

Mr. Purpura. Objection.

Chairman Nadler. Did you show anyone else the notes or keep copies for yourself?

Mr. Purpura. Objection.

Chairman Nadler. Did you discuss this exchange with the Special Counsel's Office?

Mr. Purpura. Objection.

Chairman Nadler. That would be after she was at the White House.

Mr. Trout. No. All of her interviews with special counsel were while she was at the White House.

Chairman Nadler. And your objection includes even things having nothing to do with the White House?

Mr. Trout. Well, I am not --

Chairman Nadler. We went through the Israel-Egyptian nonwar before. Okay.

Did you discuss this exchange with the special counsel's office while you were at the White House?

Mr. Purpura. Objection.

Chairman Nadler. Did you discuss this exchange with the special counsel's office after you were at the White House?

Ms. Hicks. I didn't meet with the special counsel after I was at the White House.

Chairman Nadler. Nor talk to him? So your answer is no?

Ms. Hicks. Correct.

Chairman Nadler. Did you share any notes or documents with the special counsel regarding this meeting?

Mr. Purpura. Objection.

Chairman Nadler. Did you at any point discuss with the President the notes or Mr. Lewandowski's request to type them?

Mr. Purpura. Objection.

Chairman Nadler. During your tenure at the White House, did you know if Mr. Lewandowski did, in fact, deliver the note to Attorney General Sessions or another administration official?

Mr. Purpura. Objection.

Chairman Nadler. Have you ever discussed -- have you ever discussed this incident with anyone outside of the special counsel and your attorney?

Mr. Purpura. Objection.

Chairman Nadler. You can't object to that. The word is "ever" not "while" she was at the White House.

Mr. Purpura. Fair point, Mr. Chairman, with the caveat of not discussing events that occurred while she was in the White House.

Chairman Nadler. Have you ever discussed this incident with anyone outside of the special counsel and your attorney?

Ms. Hicks. Not to my recollection.

Chairman Nadler. Okay. Were there any other times when the President asked Mr. Lewandowski to deliver a message for him specifically to other administration officials or former officials?

Mr. Purpura. Objection.

Chairman Nadler. Were there any other times when the President asked someone outside of the White House or the administration other than Mr. Lewandowski to deliver a message to -- for him to other administration officials or former officials?

Mr. Purpura. Objection.

Chairman Nadler. What about after you were at the White House?

Ms. Hicks. I'm not aware of any of those directives.

Chairman Nadler. Did anyone at the White --

Ms. Hicks. Sorry.

Ms. Dean. We're having a hard time hearing.



Chairman Nadler. Did anyone at the White House give you documents about this incident in preparation for meeting with the special counsel?

Mr. Purpura. Objection.

Chairman Nadler. The meeting with special counsel also occurred while you were at the White House? Okay.

Do you find it unusual at -- I'm sorry -- did you find it unusual at the time that the President asked Mr. Lewandowski to deliver a message to the Attorney General? Did the President's request raise any concerns for you at the time?

Mr. Purpura. Objection.

Chairman Nadler. What about now?

Let me rephrase the question. Did the President's request at that time raise any concerns for you now? Are you concerned about it in retrospect?

Ms. Hicks. I'm not going to answer a hypothetical question.

Chairman Nadler. It's not a hypothetical question. I'm asking are you concerned about it?

Mr. Trout. Mr. Chairman, can we confer just briefly?

Chairman Nadler. Sure.

[Discussion off the record.]

Ms. Hicks. I haven't given it any thought.

Chairman Nadler. Okay. Well, let me rephrase the question. Sitting here today, do you find it concerning that the President -- today -- that the President asked Mr. Lewandowski to

deliver a message to the Attorney General?

Ms. Hicks. "Concerning" would not be the word I would use to describe how I view that.

Chairman Nadler. Well, in any way problematic?

Ms. Hicks. I view it as odd.

Chairman Nadler. Odd. And why do you view it as odd?

Mr. Philbin. Mr. Chairman, we're going to object to further line of questioning on this --

Chairman Nadler. On what basis?

Mr. Philbin. Because it's based on knowledge that she obtained while she was a senior adviser to the President and it's probing into that past and her --

Chairman Nadler. She is -- I'm asking her about it --

Mr. Philbin. -- to characterize those events. And she's immune from testifying about those events whether factually or by giving her characterization of them after the fact.

Chairman Nadler. I'm sorry. Repeat that last sentence.

Mr. Philbin. She is immune from testifying about those events and things that she learned in her role as senior adviser to the President whether by relating the events themselves or by giving a characterization or analysis of them after the fact.

Chairman Nadler. Well, number one, we disagree with that, obviously. But number two, I am not asking her about her attitude then or about the events then. I'm asking her if she is now -- if she finds -- why she finds it odd, as she said a moment ago she

did, based on reading the public record.

Mr. Philbin. Well, the same objection stands. And she may not --

Chairman Nadler. No, it doesn't.

Mr. Philbin. She does, Mr. Chairman. I respectfully disagree.

Chairman Nadler. I ask that you answer the question.

Mr. Trout. There has been an objection. We have indicated that we will --

Chairman Nadler. We've noted the objection.

Mr. Trout. And consistent with the letter that I wrote to you yesterday, she is not going to answer any questions as to which the White House objects.

Chairman Nadler. Okay. Do you recall the President giving a live interview the same day as the July 19th, 2017, meeting with Mr. Lewandowski, the meeting where you typed the notes?

Mr. Purpura. Objection.

Chairman Nadler. I'd like to introduce pages 93 to 94 of volume two, including footnote 636 of the Mueller report, as the next exhibit.

[Hicks Exhibit No. 6

Was marked for identification.]

Chairman Nadler. Can you please read out loud the highlighted portion into the record?

Ms. Hicks. Within hours of the President's meeting with

Lewandowski on July 19th, 2017, the President gave an unplanned interview to The New York Times in which he criticized Sessions' decision to recuse from the Russia investigation. The President said that, quote, Sessions should never have recused himself, and if he was going to recuse himself, he should have told me before he took the job and I would have picked somebody else, close quote.

Sessions' recusal, the President said, was very unfair to the President. How do you take a job and then recuse yourself? If he would have recused himself before the job, I would have said, Thanks, Jeff, but I can't, you know, I'm not going to take you, close quote. It's extremely unfair, and that's a mild word to the President.

Hicks, who was present for the interview, recalled trying to, quote, throw herself between the reporters and the President to stop parts of the interview, but the President, quote, loved the interview.

Chairman Nadler. Is that description of the events accurate?

Mr. Purpura. Objection.

Chairman Nadler. Did you discuss this incident with the special counsel?

Mr. Purpura. Objection.

Chairman Nadler. Did you tell the special counsel you tried to throw yourself between the reporters and the President, in quotes, to stop parts of the interview?

Mr. Purpura. Objection.

Chairman Nadler. Is the special counsel's report accurate, to your knowledge?

Mr. Purpura. Objection.

Chairman Nadler. Is the special counsel's report inaccurate, to your knowledge?

Mr. Purpura. Objection.

Chairman Nadler. Did you tell the truth to the special counsel?

Mr. Purpura. Objection.

Chairman Nadler. Objection?

Let me restate the question. Did you perjure yourself to the special counsel?

Mr. Purpura. Same objection.

Chairman Nadler. Same objection.

Why did you want to stop the New York Times interview?

Mr. Purpura. Objection.

Chairman Nadler. Do you recall discussing the interview with Lewandowski?

Mr. Purpura. Objection.

Chairman Nadler. What about anyone else outside the White House or the special counsel's office?

Mr. Purpura. Objection.

Chairman Nadler. I'd like to read the second highlighted portion from that -- I'd like you to read the second highlighted

portion from that page into the record.

Ms. Hicks. Later that day Lewandowski met with Hicks and they discussed the President's New York Times interview. Lewandowski recalled telling Hicks about the President's request that he meet with Sessions and joking with her about the idea of firing Sessions as a private citizen if Sessions would not meet with him.

As Hicks remembered the conversation, Lewandowski told her the President had recently asked him to meet with Sessions and deliver a message that he needed to do, quote, the right thing and resign. While Hicks and Lewandowski were together, the President called Hicks and told her he was happy with how coverage of his New York Times interview criticizing Sessions was playing out.

Chairman Nadler. Is that what you told the special counsel?

Mr. Purpura. Objection.

Chairman Nadler. Is that description of the events accurate?

Mr. Purpura. Objection.

Chairman Nadler. Do you recall speaking with Lewandowski that day?

Mr. Purpura. Objection.

Chairman Nadler. Did Lewandowski tell you that the President asked him to meet with Sessions to deliver the note you typed up?

Mr. Purpura. Objection.

Chairman Nadler. Did he tell you if he delivered that message?

Mr. Purpura. Objection.

Chairman Nadler. Did you ever follow up with him and ask him if he delivered the message?

Mr. Purpura. Objection.

Chairman Nadler. Did you ask him not to deliver the message?

Mr. Purpura. Objection.

Chairman Nadler. Do you believe what you said to the special counsel?

Mr. Purpura. Objection.

Chairman Nadler. I'm asking her what she believes now.

Mr. Philbin. The same objection. It's an attempt to have her characterize the testimony that was given during her time as a senior adviser to the President.

Chairman Nadler. I'm asking you if you believe what you said to the special counsel.

Mr. Philbin. Objection.

Chairman Nadler. I assume you would say that you testified truthfully to the special counsel. Do you object to that, too?

Mr. Philbin. Yes, Mr. Chairman, for the reasons we've stated. These are all attempts to have her characterize the testimony that was given which relates to the events at the time she was a senior adviser to the President. She's immune from being compelled to testify about those events whether in the first instance or by characterizing the testimony she gave about those events.

Chairman Nadler. Ms. Hicks, again, are you asserting any other basis for declining to answer these questions -- this question or any of the other questions?

Ms. Hicks. No.

Chairman Nadler. Are you asserting any privileges in declining to answer the question, any specific privileges?

Ms. Hicks. No.

Chairman Nadler. Are you asserting executive privilege in declining to answer the question?

Ms. Hicks. No, sir.

Chairman Nadler. And will you answer any other questions about this matter?

Mr. Philbin. Mr. Chairman, I think Mr. Trout made it clear in his letter yesterday --

Chairman Nadler. I'm asking Ms. Hicks. I'll ask Mr. Trout in a moment.

Ms. Hicks. I'd like to answer whatever is not objected to.

Chairman Nadler. Okay. Not objected to by whom?

Ms. Hicks. By the White House.

Chairman Nadler. By the White House.

Now, to the White House counsel, are you asserting any other basis for declining -- for advising Ms. Hicks to decline to answer these questions?

Mr. Purpura. Not at this time.

Chairman Nadler. So your answer is no?



Mr. Purpura. Correct.

Chairman Nadler. Are you asserting any privileges in declining to -- in advising Ms. Hicks to decline to answer these questions?

Mr. Purpura. Not at this time, Mr. Chairman.

Chairman Nadler. What?

Mr. Purpura. Not at this time, Mr. Chairman, no.

Chairman Nadler. Are you asserting executive privilege -- are you advising Ms. Hicks in refusing to answer these questions on the basis of executive privilege?

Mr. Purpura. Not at this time, Mr. Chairman, no.

Chairman Nadler. And will you permit her to answer any other questions about this matter?

Mr. Purpura. No, Mr. Chairman, not at this time.

Chairman Nadler. Okay. Thank you.

I now recognize the gentlelady from Texas, Ms. Jackson Lee, for questions.

Mr. Trout. Mr. Chairman, I think there are a number of people taking pictures here, and I just want to say that I think it's making the witness uncomfortable. And I would very much appreciate it as a courtesy, if nothing else, if we could --

Chairman Nadler. That's fine. If people will please refrain from taking pictures.

Ms. Jackson Lee.

Ms. Jackson Lee. Good morning, Ms. Hicks. I am Sheila

Jackson Lee.

Ms. Hicks. Good morning.

Ms. Jackson Lee. I'm going to have one or two questions and -- I've done it again -- one or two questions in a number of different areas.

Let me first start with the report. According to the report, by late summer of 2016 the Trump campaign was planning a press strategy, a communications campaign and messaging, based on the possible release of Clinton emails by WikiLeaks. Who was involved in that strategy?

Ms. Hicks. I don't recall.

Ms. Jackson Lee. I thought you were intimately involved in the campaign.

Ms. Hicks. I was. It's not something I was aware of.

Ms. Jackson Lee. What about the communications campaign, who was involved there? Do you not recall or do you not know?

Ms. Hicks. To my recollection, it's not something I was aware of.

Ms. Jackson Lee. So you're saying you do not know?

Ms. Hicks. I'm saying, to the best of my recollection, I was not aware of that at the time.

Ms. Jackson Lee. What about the actual messaging, who was involved there?

Ms. Hicks. There were several different people that were involved in different parts of the campaign throughout various

phases.

Ms. Jackson Lee. What are their names?

Ms. Hicks. So you'd have to be more specific.

Ms. Jackson Lee. What are their names?

Ms. Hicks. There was obviously a lot of turnover, as has been widely reported.

Ms. Jackson Lee. But in the messaging what would be the core people that you remember?

Ms. Hicks. Again, if there was a more specific timeframe, that would be helpful. Post-Republican National Convention, that would be helpful.

Ms. Jackson Lee. Who specifically was engaged with the Russian strategy, messaging strategy, post the convention, late summer 2016?

Ms. Hicks. I'm sorry. I don't understand the question. I'm not aware of a Russian messaging strategy.

Ms. Jackson Lee. So specifically it goes to the release of the various WikiLeaks information. Who was engaged in that?

Ms. Hicks. So, I mean, I assume you're talking about late July?

Ms. Jackson Lee. Late July, late summer, July, August 2016.

Ms. Hicks. So there were several people involved. It was -- I think a "strategy" is a wildly generous term to describe the use of that information, but --

Ms. Jackson Lee. But you were engaged in the campaign. What

names, what specific persons were involved in that strategy of the impact of Russia and the issuance of the WikiLeaks effort late summer?

Ms. Hicks. Again, you --

Ms. Jackson Lee. Were you involved? Were you part of the strategy? You have a communications emphasis.

Ms. Hicks. I'm sorry. I'm just not understanding the question. You're talking about a Russian strategy. The campaign didn't have a Russian strategy.

There was an effort made by the campaign to use information that was publicly available, but I'm not aware of a Russian strategy, communications or otherwise.

Ms. Jackson Lee. Well, what names were engaged in the strategy that you remember, messaging based on the possible release of Clinton emails by WikiLeaks, which is what I said?

Ms. Hicks. Sorry. I'd like to confer with my counsel. Thanks.

Ms. Jackson Lee. Thank you.

[Discussion off the record.]

Mr. Gaetz. Ms. Jackson Lee, while Ms. Hicks is speaking with her counsel, I just want to let you know of a dynamic back here on the back row. We're having a little bit of a hard time hearing, and so if you guys could get right up on the microphone. And then there's a good amount of sort of murmuring and people shuffling in the row directly in front of us. It's probably Mr. Cicilline.

But if we could --

Mr. Cicilline. Gasping in disbelief.

Mrs. Demings. You can't hear anybody speaking, so if everybody could speak up.

Ms. Jackson Lee. Mr. Gaetz, I will speak as loudly as I possibly can. Can you hear me now?

Mr. Gaetz. Yes, ma'am. Thank you. We're all the better for it.

Ms. Jackson Lee. Outstanding. Thank you.

Ms. Hicks. Thank you. Do you want to repeat your question one more time?

Ms. Jackson Lee. Yes. I'm going to read from my earlier comment. According to the report, by late summer of 2016 the Trump campaign was planning a press strategy, a communications campaign, and messaging based on the possible release of Clinton emails by WikiLeaks, volume 1, 54. Were you involved in deciding how the campaign would respond to press questions about WikiLeaks?

Ms. Hicks. I assume that I was. I have no recollection of the specifics that you're raising here.

Ms. Jackson Lee. With that in mind, would you agree that the campaign benefited from the hacked information on Hillary Clinton?

Ms. Hicks. This was publicly available information.

Ms. Jackson Lee. Were you -- would you agree that the campaign benefited from the hacked information on Hillary Clinton?

Ms. Hicks. I don't know what the direct impact was of the

utilization of that information.

Ms. Jackson Lee. Well, let me follow up with, did this information help you attack the opponent of Mr. Trump?

Ms. Hicks. I take issue with the phrase "attack." I think it allowed the campaign to discuss things that would not otherwise be known but that were true.

Ms. Jackson Lee. So the campaign -- is it your position the campaign benefited from the hacked emails of Ms. Clinton?

Ms. Hicks. It is not my position that we benefited from those emails. It's my position that we used publicly available information in the course of the campaign --

Ms. Jackson Lee. And the campaign benefited from it?

Ms. Hicks. -- to differentiate between candidates.

Ms. Jackson Lee. Did Mr. Trump win?

Ms. Hicks. Yes, he did.

Ms. Jackson Lee. Then it is likely that he would have benefited?

Ms. Hicks. I think that is a -- I think that's a big jump. I think there are many other reasons that Mr. Trump won that election. I'm not sure that you can attribute it to one factor.

Ms. Jackson Lee. Let me move to another line of questioning regarding Mr. Cohen. Can you describe Mr. Trump's relationship with Michael Cohen during the campaign?

Ms. Hicks. Michael was an employee of The Trump Organization. He continued in that role throughout the campaign.

And I would say that their contact and interactions were minimal during that time given Mr. Trump's extensive travel schedule.

Ms. Jackson Lee. How often would they speak?

Ms. Hicks. I'm not aware of the frequency with which they spoke.

Ms. Jackson Lee. Do you think Mr. Trump trusted Mr. Cohen?

Ms. Hicks. I am not going to speculate about the feelings or motivations of others. I am not --

Ms. Jackson Lee. Were you ever present when Trump and Cohen discussed Stormy Daniels?

Ms. Hicks. No, ma'am.

Ms. Jackson Lee. You were never present when they discussed Stormy Daniels?

Ms. Hicks. No.

Ms. Jackson Lee. I'm going to say it again. Were you ever present when Trump and Mr. Cohen discussed Stormy Daniels, since it was all over the news that that occurred?

Mr. Philbin. Let me just object to make -- my understanding is this question is limited to during campaign. That's the line of questioning.

Ms. Jackson Lee. That's correct, sir.

Ms. Hicks. So, no is my answer.

Ms. Jackson Lee. So do you know what they would say?

Ms. Hicks. I'm sorry. I don't understand.

Ms. Jackson Lee. You don't know what would have been said?

You don't have any recollection --

Ms. Hicks. I was never present --

Ms. Jackson Lee. -- of hearing what was the discussion?

Ms. Hicks. I was never present for a conversation --

Ms. Jackson Lee. If Cohen was making a public statement, would he get approval from you first?

Ms. Hicks. That would be my preference, however, that was not always the case.

Ms. Jackson Lee. When did he not get your approval?

Ms. Hicks. I can't recall a specific example, but there were many times he would make television appearances or speak to reporters without checking with anybody on the campaign. He would do so on his own.

Ms. Jackson Lee. Were you ever upset about what Mr. Cohen might have said publicly?

Ms. Hicks. Yes.

Ms. Jackson Lee. And when was that?

Ms. Hicks. When he would say things that weren't accurate or that were direct contradictions of campaign messaging.

Ms. Jackson Lee. Do you have some examples?

Ms. Hicks. One example I recall, the campaign produced an advertisement. There was a mistake in the footage, or a perceived mistake rather, in the footage that was used. The campaign's position was that this was an intentional use of footage that was not representative of the United States southern border, but



rather representative of what could happen if Mr. Trump was not elected President.

Ms. Jackson Lee. What was the footage you're referring to?

Ms. Hicks. It was footage of people crossing the border. And Michael did an interview without anyone's knowledge and went on TV and said that this was not an intentional use of that footage but it was, in fact, a mistake.

Ms. Jackson Lee. All right. Let me ask you this. Did you -- did Mr. Trump ever direct you to make public statements -- public statements about the hush money payments during the campaign?

Ms. Hicks. Sorry. Can you repeat the question?

Ms. Jackson Lee. Did Mr. Trump ever direct you to make public statements about the hush money payments during the campaign?

Ms. Hicks. Can I confer with my attorney, please?

[Discussion off the record.]

Ms. Hicks. Thank you. Sorry. Go ahead and repeat your question one last time.

Ms. Jackson Lee. Did Mr. Trump ever direct you to make public statements about the hush money payments during the campaign?

Ms. Hicks. I was directed to make a public statement denying that a relationship existed between Mr. Trump and a woman named Karen McDougal.

Ms. Jackson Lee. What about hush payments?

Ms. Hicks. I don't believe I commented on the arrangement that the National Enquirer or American Media had with this woman.

Ms. Jackson Lee. What statement were you directed to make about Karen McDougal?

Mr. Philbin. I want to make clear, this is all during the campaign, correct?

Ms. Hicks. Yes.

I don't -- I don't recall my specific words, but that there was no relationship between the two of them.

Ms. Jackson Lee. Did you ask the President whether that was true?

Ms. Hicks. Not to my recollection.

Ms. Jackson Lee. We will continue. Thank you so very much.

Ms. Hicks. Thank you.

Mr. Gohmert. Just to clarify, though, when you say did she ask the President, that sounds like you're asking about while he was President. You're talking about did she ask candidate Trump?

Ms. Jackson Lee. These questions I asked were pertaining to the campaign.

Mr. Neguse. Good morning, Ms. Hicks. I want to ask you about a different topic, but just finishing up on that topic with respect to what Representative Gohmert mentioned. So this was during the campaign. Who directed you to make this statement?

Ms. Hicks. Mr. Trump.

Mr. Neguse. When -- so switching gears -- when did you first become aware that the Russian Government was attempting to interfere in the 2016 elections?

Ms. Hicks. Whenever that was made publicly available.

Mr. Neguse. You have no direct recollection of in terms of a time period that you learned that that was happening?

Ms. Hicks. I have recollections of when it was first raised, I believe, by the Clinton campaign during the Democratic National Convention. And I don't recall specifically when an assessment was made by anybody outside of the Clinton campaign, but when the information was available publicly that that would be when I learned about it.

Mr. Neguse. Do you recall being told at any point prior to the election that anyone at the Trump campaign had been offered information on Secretary Clinton?

Ms. Hicks. No, not to my knowledge.

Mr. Neguse. You don't, you don't believe that that happened, that you were told at any point prior to the election that that had occurred?

Ms. Hicks. I don't have any recollection of that.

Mr. Neguse. Did you discuss who might have hacked Secretary Clinton's campaign emails with anyone during the campaign?

Ms. Hicks. I believe it was a topic of discussion generally within the media. I'm sure it was discussed amongst staffers.

Mr. Neguse. And with respect to the discussions that you had

with staffers on the campaign, what did those discussions entail? What were the view of folks on the campaign in terms of who hacked Secretary Clinton's emails?

Ms. Hicks. There's no definitive point of view that comes to mind.

Mr. Neguse. Did you --

Ms. Hicks. Speculation.

Mr. Neguse. Did you discuss it ever with Mr. Trump prior to the election?

Ms. Hicks. I don't recall any specific conversations.

Mr. Neguse. So you don't recall ever speaking with Mr. Trump regarding whether Russia and the Russian Government had hacked Secretary Clinton's emails?

Ms. Hicks. Oh, excuse me. Sorry. Thank you for rephrasing the question.

I think that there were conversations about that that I remember specifically prior to debates, and nothing was said privately that he hasn't said publicly.

Mr. Neguse. So -- but I -- I am wanting to know your recollection as to those conversations of what did he say to you regarding the hack --

Ms. Hicks. Like I said, nothing that was said to me privately that he hasn't also repeated publicly.

Mr. Neguse. And what would that be?

Ms. Hicks. I hope I'm not botching his quote, but I believe

that it was something to the effect of it could have been Russia,  
it could have been China, it could have been somebody at home in  
their basement.

[10:02 a.m.]

Mr. Neguse. So those comments that he said publicly, that was his position to you privately in your conversations with him --

Ms. Hicks. Exactly.

Mr. Neguse. -- during the campaign?

Ms. Hicks. Yes.

Mr. Neguse. At the time, who did you think did the hack? Did you agree with him?

Ms. Hicks. I don't have an opinion on that.

Mr. Neguse. You didn't have any opinion on that then?

Ms. Hicks. Correct.

Mr. Neguse. You do have an opinion on that now, I presume?

Ms. Hicks. Yes.

Mr. Neguse. And what is your opinion now?

Ms. Hicks. I'm not here to discuss my opinions.

Mr. Neguse. You're here to testify under oath about your views of the matters at issue in this --

Mr. Trout. I actually don't think that she is under oath, but she is going to tell the truth.

Mr. Neguse. Under 18 USC 1001, as Chairman Nadler articulated in the beginning of the hearing. In any event, you're declining to answer your opinion as to the --

Ms. Hicks. I agree with the assessment of the intelligence community.

Mr. Philbin. Hold on. I'd like to object. To the extent this question is asking for views formed, based on information she learned while senior adviser to the President, I'm going to object.

Mr. Neguse. That is not the nature of the question, and I think counsel knows that. So in any event, we'll move on.

Do you want to complete your answer? I think you were essentially --

Ms. Hicks. I agree with the assessment of our intelligence community.

Mr. Neguse. Thank you.

Do you recall receiving requests for interviews from Russian individuals in the summer of 2015?

Ms. Hicks. I've reviewed materials over the process that has ensued in the last few years. So, yes, I'm aware of those. I didn't -- nothing was remarkable about them when I received them at the time.

Mr. Neguse. Let's just jump -- we'll jump to a page in the report just to refresh your recollection, and then we can -- because I think we're referring to the same thing.

Ms. Hicks. Sure.

Mr. Neguse. So on Page 55, Volume 1, footnote 288, quote, August 18, 2015, on behalf of the editor in chief of the internet newspaper Vzglyad, I believe, Georgi Asatryan e-mailed campaign press secretary Hope Hicks asking for a phone or in-person

candidate interview. One day earlier the publication's founder and former Russian parliamentarian Konstantin Rykov had registered two Russian websites, Trump2016.ru and DonaldTrump2016.ru. No interview took place.

Does that refresh your recollection? Do you recall receiving that request?

Ms. Hicks. I don't. I received hundreds of interview requests, sometimes daily, but at the very least weekly, and I don't recall receiving that request.

Mr. Neguse. You don't recall receiving that particular request?

Ms. Hicks. No.

Mr. Neguse. According to the report, on June 3rd, 2016, Rob Goldstone, on behalf of Russian real estate developers, emailed Donald Trump, Jr., as you know, to set up a meeting to discuss Russian officials' possession of, quote, some official documents and information that would incriminate Hillary in her dealings with Russia and would be very useful to, bracketed, Donald Jr.'s father, end quote, which Mr. Goldstone conveyed was, quote, part of Russia and its government support for Mr. Trump, end quote. This is on Page 113 of Volume 1.

Donald Trump, Jr. responded, quote, if it's what you say, I love it, end quote. Again, this is Page 113, and I believe you have a copy of the report there at the desk.

Did you have knowledge of those emails that I just referenced



at the time that they were written?

Ms. Hicks. I did not.

Mr. Neguse. Did you ever speak to Mr. Trump Jr. about the campaign receiving information, potentially, from foreign officials that would incriminate Secretary Clinton?

Mr. Philbin. And again just to --

Mr. Purpura. Just during the campaign period?

Mr. Neguse. During the campaign period, prior to the election.

Mr. Purpura. Thank you, sir.

Ms. Hicks. No, did I not.

Mr. Neguse. Never, in 2016, prior to the election, had you spoken with Mr. Trump Jr. about this incident in question?

Ms. Hicks. I have no recollection of any conversations that would fall in that category, no.

Mr. Neguse. So are you saying you didn't have those conversations or you don't remember whether you had those conversations?

Ms. Hicks. I'm saying that to the best of my recollection here today, I do not recall ever having those conversations.

Mr. Neguse. Do you know why he didn't tell you about those emails?

Mr. Purpura. Objection. Again, if it's --

Mr. Neguse. During -- prior to the election. Again, I understand your -- I would reiterate, obviously, the committee's

vigorous disagreement with your assertion of absolute immunity.  
But in any event.

Ms. Hicks. No, I'm not go to opine on somebody's motivations for why they did or didn't tell me something.

Mr. Neguse. Do you have any information as to his motives, in terms of providing such information or not providing such information to you, given your role as the senior communications strategist on the campaign?

Ms. Hicks. I don't understand the question. But it sounds like a question for -- for him.

Mr. Neguse. Did Mr. Trump during the campaign ever tell you that he had knowledge that additional information would be released with respect to the leaks or -- excuse me -- the hacks done by WikiLeaks and so forth?

Ms. Hicks. I don't recall any statements or conversations to that effect, no.

Mr. Neguse. Let me give you one specific example, and then I think we have to end this portion of the hearing.

According to the report, the special counsel's report, in late summer of 2016, then candidate Trump and Mr. Gates were driving to LaGuardia Airport and had a phone call. After that phone call -- there's a portion of the report that's redacted -- it says, quote, Candidate Trump told Gates that more releases of damaging information would be coming. This is on page 54 of Volume 1 of the report.

Were you aware of that conversation?

Ms. Hicks. I don't have any recollection of that conversation.

Mr. Neguse. Do you recall Mr. Trump telling anyone at the campaign in your presence that more information would be leaked?

Ms. Hicks. No, I don't.

Mr. Neguse. Again, you don't recall, or you are saying that those conversations didn't take place?

Ms. Hicks. I'm saying I'm not aware of any conversations that are as you describe.

Ms. Hariharan. All right. It's the end of the first hour. We'll go off the record now. It is 10:10 a.m.

[Recess.]

Mr. Collins. All right, starting time, 10:21.

I'm Congressman Doug Collins from Georgia. I'm the ranking member of the Judiciary Committee.

And a few things that I want to state up front before we get started.

I do want to say that I am concerned, and making this known to the majority staff and also the chairman as well, that we did have an agreement on members and committee staff to be in here. And it was disturbing to me to find that the majority's press staff was in here for the majority of the first round of questioning, not what I would have considered within the scope of pertinent staff availability in this room at that point.

It just goes, frankly, from my opinion, to show that this is more for a press availability than it is for actual information, and I do, you know, object to that. I think it has been cleared up at this point, they are no longer in the room, but needed to be pointed out as we go forward.

But before I get started with my questions, Ms. Hicks, is there anything from the previous hour that you would like to -- I want to give you an opportunity to clarify or, you know, elaborate on.

Ms. Hicks. Yes, sir. The last question I was asked pertaining to candidate Trump being aware of releases of information prior to, or the discussion of that. I don't think I was clear enough in saying that there were discussions based on public speculation.

So if people in the media were saying things like, if there were more emails to be distributed, that would be devastating to the Clinton campaign, certainly that was something that he would -- he would opine on, but nothing that wasn't in the public domain.

Mr. Collins. So nothing out -- it was just basically responding to what was being out in the press?

Ms. Hicks. Yes, sir.

Mr. Collins. All right. Well, I have a few questions. We'll go through these. And I am accused at times of talking fast. I am from Georgia, so I do talk slow occasionally.

So let's go through a few things, and, again, we'll go through this.

I just have a question. How many times have you testified before Congress about your time in the campaign and the transition?

Mr. Purpura. Objection.

Mr. Collins. Okay. Did you -- and I'm going to continue this line here -- did you testify before the House Select Intelligence Committee?

Mr. Purpura. Objection.

Mr. Collins. So how long? How long ago? And how long did you testify before them?

Mr. Lieu. We can't hear that objection.

Mr. Philbin. Just to clarify, the objection is, these questions about her testimony relate to her time as a senior adviser to the President. She was a senior adviser to the President when these incidents of testimony took place. It's covered under the immunity that we described earlier.

Mr. Collins. At this point in time, I'll remind the minority that this is not the minority's time, however, and if they would like to have an extra time, they will have their time at this point. But I will continue to ask questions at this point.

Did you testify voluntarily?

Mr. Purpura. Objection. I think we can stipulate that there was testimony that occurred --

Mr. Collins. Okay.

Mr. Purpura. -- and go from there.

Mr. Collins. All right. There was testimony that occurred, both in the House and the Senate? Stipulate to that?

Mr. Purpura. Stipulate to that, during her time as a senior adviser.

Mr. Collins. Okay. The question, did you testify voluntarily? Or in --

Ms. Hicks. Yes, sir.

Mr. Collins. You did. Okay. Testified voluntarily. And I'm assuming you brought a lawyer with you.

Ms. Hicks. Yes, sir.

Mr. Purpura. Objection.

Mr. Collins. Okay. Did you provide documents to either committee?

Mr. Purpura. Objection.

Mr. Collins. And did you provide those documents voluntarily?

Mr. Purpura. Objection.

Mr. Collins. Let me ask a different question. Have you cooperated with every formal investigation over the past 2 years when your documents or testimony have been sought?

Mr. Purpura. Objection.

Mr. Collins. Okay. Changing directions here a little bit. And this is some questions that you may or may not have knowledge

of, but I wanted to find out.

March 4th, 2019, Chairman Nadler -- did Chairman Nadler send you a letter requesting documents?

Mr. Trout. The answer is yes.

Mr. Collins. Okay. Did you provide documents pursuant to this letter?

Mr. Trout. Her counsel did.

Mr. Collins. Did you provide these documents voluntarily?

Mr. Trout. Yes.

Mr. Collins. Now that the mike is fixed.

Did Chairman Nadler issue you a subpoena for documents and testimony?

Mr. Trout. Yes. He issued a subpoena to Ms. Hicks.

Mr. Collins. Did you provide the documents pursuant to that subpoena?

Mr. Trout. We provided some documents and withheld other documents pursuant to -- and described all of that in a letter to the chairman and to the minority. I believe it was June 4th, 2019.

Mr. Collins. Okay. So twice the chairman has asked you for documents, and twice you have provided them. Would that be correct?

Mr. Trout. Well, we have provided those documents that we were at liberty to provide.

Mr. Collins. Okay. Going back to the original 81 letters.

Do you -- were you aware that Chairman Nadler was going to issue a subpoena, or did that strike you as strange, considering the documents that you had already turned over?

Mr. Trout. Well, the documents that we turned over, there was a specific category of documents that we were requested to turn over that did not include everything that was covered by the subpoena. So I did not regard the subpoena as remarkable.

Mr. Collins. Okay. Was the subpoena necessary given that you had already produced the -- these documents voluntarily?

Mr. Trout. Well, I don't -- I don't speak for the chairman or for the committee, so I don't know whether it was necessary.

Mr. Collins. Okay. But do you feel like the requests that have been made to you, that you have made a good-faith effort to comply with?

Mr. Trout. Yes. We have always conducted ourselves in good faith in discussions with the committee, as well as with the White House.

Mr. Collins. On March 4th -- couple of questions -- March 4th, Chairman Nadler also sent a letter to Julian Assange requesting documents. Ms. Hicks, do you know if Julian Assange produced these documents pursuant to the chairman's request?

I'll help you. He didn't. He did not respond.

March 4th, did Chairman Nadler send a letter to -- and these are others that was in the 81, you were a popular group there -- Carter Page requesting documents?



Ms. Hicks. I'm not aware of any other requests that were fulfilled --

Mr. Collins. So were you aware --

Ms. Hicks. -- outside of my own obligations.

Mr. Collins. I apologize. So you would be aware if they did not produce any documents for that?

Ms. Hicks. Again, I'm only aware of my own actions. I'm sorry.

Mr. Collins. Okay. And let me just clarify, he did not. And for the record, did not.

Alexander Nix was another one that was asked during this 81 request, that was asked for documents, and I'm going to go ahead and help you, did not also. Rob Goldstone was another one that was actually requested, did not produce anything, and didn't even respond to the chairman's request.

Do you know why the chairman sent you a subpoena, even though you had cooperated with his inquiry, but he did not send a subpoena to the ones that I have just mentioned -- Julian Assange, Carter Page, Alexander Nix, and Rob Goldstone -- who totally ignored the chairman's inquiry.

Ms. Hicks. I do not know the reason.

Mr. Collins. Let me ask you this, in the sense, from the perspective of actually doing your best, as was stated earlier, that you did a good-faith effort to comply with everything that the chairman sent you, didn't it seem that if you choose to

cooperate here, it seems like that if you choose to cooperate, you're going to get a subpoena, and if you choose not to cooperate, the chairman will ignore you.

Ms. Hicks. I'd like to confer with my counsel. I'm teasing.  
[Discussion off the record.]

Ms. Hicks. I'm not going to speculate about others.

Mr. Collins. I think the speculation is obvious by looking at the record. What we are seeing in those regards is that -- and we have seen this consistently -- that if you make a better press hit in this hub, we are seeing that subpoenas are issued for you. But if you just choose to willingly ignore, what we're finding is that you don't get a subpoena and you're allowed to ignore these.

A couple more questions that I want to go down, and this would be considered -- and would go back to your subpoenas of your documents.

Are you a custodian of documents created by you in your official duties as a White House official?

Mr. Purpura. Objection. The chief of staff to the White House is the official custodian of White House records.

Mr. Collins. Thank you for clarifying that. And so the chief of staff would be the custodian of that. If the chairman wanted documents from your time in the White House, wouldn't it be -- the White House be the appropriate entity to ask for those documents?

Mr. Trout. I think you'd have to ask the White House about

that.

Mr. Purpura. And the White House would say yes.

Mr. Collins. Very clear.

Do you know if Chairman Nadler has asked the White House for these documents?

Mr. Trout. Do you know?

Ms. Hicks. I don't know.

Mr. Trout. Okay. Speak into the --

Ms. Hicks. I don't know.

Mr. Collins. Are you the custodian of documents created by you in your official duties as an employee of Donald Trump's campaign for President?

Ms. Hicks. No, sir.

Mr. Collins. Okay. Isn't the campaign, in fact, the custodian of those documents?

Ms. Hicks. Yes, sir.

Mr. Collins. Okay. If the chairman wanted documents from your time on the campaign, wouldn't the campaign be the appropriate entity to ask for those documents?

Ms. Hicks. Yes, sir.

Mr. Collins. Do you know if Chairman Nadler has asked for those documents from the campaign?

Ms. Hicks. I do not.

Mr. Collins. Do you know if Chairman Nadler has asked for any campaigns for any of the documents that we requested so far?

Ms. Hicks. I do not.

Mr. Collins. I have -- probably will have more. At this time I'm going to pause, and I'm going to yield to the gentleman from Texas, Mr. Gohmert.

Mr. Gohmert. Thank you.

Before you accepted employment with the Trump White House, Ms. Hicks, did you have any idea that the Clinton campaign had helped fund opposition research getting false information from Russians that would be used against Donald Trump?

Ms. Hicks. No, sir.

Mr. Gohmert. And I know you don't want to speculate, but I'm really curious. Now you've been through a great deal on behalf of your country. I can't help but be curious, if you had known the hell that you would be put through as a result of the Clinton campaign hiring a foreign agent to get information from Russians and that people within the FBI and the DOJ and potentially intel would be working against the President, would you still have gone to work for the President?

Ms. Hicks. I'm extremely grateful for the opportunity I had to serve, and, yes, I would do it all over again.

Mr. Gohmert. Even knowing you had to hire these lawyers?

Ms. Hicks. Even knowing that. I would do anything to make a positive contribution for our country, and I'm very grateful I had that opportunity. I'm proud of my service, and I thank all of you for your service as well.

Mr. Gohmert. Well, thank you for your service.

Mr. Gaetz. I have no questions for Ms. Hicks, but it seems worth noting for the record that this is a preposterous proceeding. The special counsel had an unlimited budget, an unlimited amount of time, 19 prosecutors, dozens of Federal agents, over 2,000 witness statements, over 500 subpoenas, and the concept that a dozen or so Members of Congress are going to sit around with Ms. Hicks over the course of a day and uncover some fact that was left out of the Mueller report belies any common sense.

And given that we are now through the majority's first hour and they have not uncovered a single fact from Ms. Hicks that was not evident in the Mueller report, it seems indicative that this is largely about posturing and not about any development of any facts.

Mr. Biggs. Thank you. Andy Biggs from Arizona's Fifth Congressional District. I thank you for being here today, Ms. Hicks.

And I will say Mr. Gaetz took a lot of my statement, but I will -- I want to add on to something, one aspect of this.

In reviewing the Mueller report, you will find that Ms. Hicks' testimony or 302s have been referenced 27 times, extensively and exhaustively, in the Mueller report.

In fact, the majority keeps wanting you to read what you were quoted as saying in the Mueller report or other quotations from

the Mueller report.

This is really a farce, quite frankly. It's a waste of your time, it's a waste of our time. Because what we see here is the majority wants to relitigate the Mueller investigation. And they believe that the extensive resources that were expended on the Mueller investigation, including the 22 months that it took, the countless interviews, the subpoenas, 1.4 million documents reviewed -- and I keep waiting for them to expand their -- expand what they want to do here.

But we're going to bring you in. They're going to ask you questions that they know that you can't answer. And it's, quite frankly, it's an abuse of process, quite frankly, an abuse of the congressional process.

And so, I've called on my colleagues on the majority to get back to work, get back to work.

And with that, I yield back, Mr. Ranking Member.

Mr. Collins. Mr. Armstrong?

Okay. I want to come back just for a moment. And I think what has been said has been interesting. And I will have to say, is what we have seen so far in the hearings of the, what I'll call the summer of reruns and the relitigation of a report put out from a few weeks ago. So, you know, there's no -- nothing coming out now, and we're doing reruns of things that we've already read.

And really it's a shame that we're going back through the processes here of what's already been said and already been

stated, but I will have to say, you do a wonderful dramatic reading of the Mueller report, and it seems like the majority wants to have that happen as we go forward.

In this regard, we'll just continue to state, you know, the objection that this was nothing more than a press hit. This is nothing more than the ones standing outside. And, again, it goes back to me, and I'm going to comment on this. And one of the reasons I put you through the questions of things that you didn't know about was all the document requests from the 81 has been forgotten now. It has been forgotten from this event.

So if we were actually doing an investigation, my question is, what happened to them? They never provide anything, but yet they subpoena you.

I think it goes to the motive a great deal of how we look at this going forward and how we look at our questions and how we look at the process here.

I appreciate that the majority would like to find something, would like to do oversight, as was stated by my colleague from Florida. This has been done. But in this process, what we're simply hearing is a rehash, good dramatic reading, but no -- nothing new and, frankly, a waste of the committee's time.

And with that, no one else on our side, we will yield our first hour back.

Ms. Hicks. Thank you very much.

[Recess.]

Mr. Eisen. All right. Welcome back. I'm Norman Eisen. I'm a lawyer for the staff committee. And the time is, according to my watch, a quarter of 11. I'm just going to ask a couple of followup questions about Mr. Collins' questions just for the record.

Mr. Collins. Could I just -- I apologize, and I know we talked about this before. And we'll stop the clock, we'll give you a full hour. But it's also been discussed in here that this was -- and the chairman made a great elaborate statement as we started this about being confidential and keeping that through the day.

But Mr. Lieu is live-tweeting this. So I mean, if he's willing to break his own chairman, I want it noted for the record that the Member of the Democratic Party in this committee is live-tweeting what his own chairman had asked him to keep confidential.

Now, if this is the way we want to play it, we've now proven that this is nothing but a political stunt. It is a press avail opportunity. And if Mr. Lieu would like to go outside and testify to the press, that's fine. But simply doing this like it is, it's a mockery.

And I don't care what the answer will be. This was not what the chairman had said at the outset. And unless there was a meeting for a dramatic reading of what the chairman said, this is ridiculous.



Mr. Lieu. I've been live-tweeting their objections because they are so absurd.

Mr. Collins. Did you have trouble understanding the chairman?

Mr. Lieu. The objections --

Mr. Collins. Did you have trouble understanding your chairman?

Mr. Lieu. [Inaudible.]

Mr. Collins. Did you have any trouble with your chairman?

Mr. Neguse. Mr. Chairman, this is the majority's hour.

Mr. Collins. And I said stop the clock.

Mr. Neguse. The ranking member's objection has been noted. I think at this point, start back the clock, Mr. Eisen can proceed with the questions.

Mr. Biggs. I'd like to make a statement.

Mr. Neguse. It's not -- this isn't -- this isn't the minority's hour to make a statement.

Mr. Cicilline. Let's be respectful of the witness' time and proceeding with this proceeding. You'll have an opportunity --

Mr. Neguse. You're free to make your statement during your hour.

Mr. Biggs. Well --

Mr. Neguse. Mr. Eisen.

#### EXAMINATION

BY MR. EISEN:

Q Okay. Ms. Hicks, you were asked by Ms. Jackson Lee about a statement in the Mueller report that by late summer of 2016 the Trump campaign was planning a press strategy, a communications campaign, and messaging based on the possible release of Clinton emails by WikiLeaks, and you answered to the effect that it was wildly inaccurate to call it a strategy. Do you remember that answer?

A I believe I said that I wasn't aware of any kind of coordinated strategy like the one described in the report and quoted by Ms. Jackson Lee.

Regardless, the efforts that were under way, to take publicly available information and use that to show a differentiation between Mr. Trump as a candidate and Mrs. Clinton as a candidate, I would say that it would be wildly generous to describe that as a coordinated strategy.

Q How would you describe it?

A I would describe it just as I did, which is taking publicly available information to draw a contrast between the candidates.

Q What do you remember about any specific occasions when that was discussed?

Mr. Purpura. Again, just to clarify, we're talking about during the campaign?

Mr. Eisen. Yes, during the campaign, is the question.

Ms. Hicks. I don't have any specific recollections. I could

speculate. I won't, but I don't have any specific recollections.

BY MR. EISEN:

Q Do you have general recollections?

A Yes, I do.

Q Tell me what you remember, everything you remember about that.

A The things I remember would be just the days that -- that news was made, right? That there was a new headline based on new information that was available, and how to either incorporate that into a speech or make sure that our surrogates were aware of that information and to utilize it as talking points in any media availabilities, interviews, and what other opportunities there might be to, again, emphasize the contrast between candidates.

Q Did you ever discuss that with Mr. Trump during the campaign?

A Again, I don't recall a -- I don't recall discussions about a coordinated strategy. But more specifically, to your last point about when there were moments that allowed for us to capitalize on new information being distributed, certainly I'm sure I had discussions with him.

Q Do you remember any of those discussions?

A I don't.

Q Do you remember anyone else you discussed that with?

A Other members of the campaign, specifically,

speech-writing, staff members, or research folks to check the accuracy of any information, surrogate networks, folks in the message-development team that were either responsible for communicating desired messages to our surrogates and other folks who would be speaking on behalf of the campaign or developing the message itself.

Q Can you tell me about how often these conversations occurred? Was it a daily occurrence?

A Sure. There were daily conversations with the communications team. So I imagine this was on the agenda, as it was happening.

Q And can you tell me the names of any of the people? You just identified the general categories. Who would those individuals -- who are those individuals? Again, I'm confining myself to the campaign at this time.

A Other members of the campaign communications team would be Jason Miller --

Q Ms. Hicks, I'm going to ask you to speak -- to bring the microphone closer and to speak up. Although the room is not quite as large as it was before, people do want to hear.

A Other members of the communications team that I recall would be Jason Miller, Cliff Sims, Steven Cheung, Andrew Surabian.

And there was, you know, there was a combined effort between the Trump campaign and the Republican National Committee. So there were other staffers that were -- would be technically

designated as employees of the RNC that would have been involved. I'm not as familiar with them. They were obviously based in D.C.

Q Do you recall any of their names?

A Raj Shah, Andrew Hemming, Michael Short are the few that I remember.

Q And was there ever any time in any of those conversations or instances when you learned of any information about a WikiLeaks release before it was public?

A No, sir.

Q And did Eric Trump ever discuss anything relating to WikiLeaks or other releases of hacked information with you?

A May I confer with my counsel, please.

[Discussion off the record.]

Ms. Hicks. Can you repeat the question, please?

Mr. Eisen. Can I have the court reporter read back the question, please?

Reporter. Did Eric Trump ever discuss anything relating to WikiLeaks or other releases of hacked information with you?

Ms. Hicks. I believe I received an email from Eric or some written communication regarding an opposition research file that was, I guess, leaked on the internet. I believe it was publicly available when he sent it to me. It was about Donald Trump.

BY MR. EISEN:

Q And do you know if it was publicly available when he sent it to you?

A I don't recall. That's my recollection.

Q What's the basis for your belief that it was publicly available?

A I believe there was a link that was included, and I was able to click on that and access the information.

Q How did he transmit that to you?

A I don't remember if it was an email or a text message.

Q Was there also a document attached to that transmission?

A I don't remember.

Q Do you remember the date?

A Spring of 2016.

Q Spring of 2016.

Just a couple questions about Mr. Collins' examination, the minority examination of you in the previous block.

The White House asserted, Mr. Purpura asserted a number of objections. Do you understand those objections to be based on absolute immunity?

A Yes, sir.

Q Will you answer those questions?

A I'm going to follow the guidance provided by the White House.

Q Are you providing any other basis for declining to answer the questions to which Mr. Purpura objected, that Mr. Collins posed?

A No, sir.

Q And are you asserting any privileges here today in doing so?

A No, sir.

Q Are you asserting executive privilege?

A No, sir.

Q And will you answer any other questions about those matters that Mr. Collins was examining you on that drew the objections?

A I will answer anything that is not objected to.

Mr. Eisen. Mr. Purpura, can we stipulate for the record that your answers to those questions are the same, that it's absolute immunity, no other basis, not asserting any other privileges in refusing to answer, and not asserting executive privilege in refusing to answer?

Mr. Purpura. We can stipulate that the answer is, we're not asserting any privileges at this time, and we are asserting the basis of immunity at this time.

Mr. Eisen. All right. And not asserting any other basis at this time?

Mr. Purpura. Not at this time, correct.

Mr. Eisen. And will you allow the witness to answer additional questions if I ask followup questions to Mr. Collins' questions in those subject matter areas that he raised?

Mr. Purpura. Not at this time.

Mr. Eisen. Okay.

BY MR. EISEN:

Q Oh, one last question on Mr. Collins' question. I'm sorry to take so long. Then I'm going to turn it over to the members.

Mr. Collins asked you about a voluntary document request that we made to you and then about a subpoena, correct?

A Yes, sir.

Q To your understanding, documents were withheld at the instruction of the White House in response to our voluntary request, the first one. Is that correct?

A Yes, sir.

Q And documents were withheld at the request of the White House in response to our subpoena. Is that correct?

A Yes, sir.

Mr. Eisen. I'll ask the White House if they're prepared to turn over those documents today that Mr. Collins was asking about.

Mr. Purpura. We are not.

Mr. Eisen. Okay. With that --

Mr. Davis. Has the chairman asked the White House for those documents?

Mr. Eisen. Yes. For the record, yes. The chairman has asked the White House --

Mr. Davis. Specifically?

Mr. Eisen. -- did a document request to the White House.

Mr. Purpura. Well, those are two different things, and those



are part of our ongoing discussions. It's part of the accommodation, as you know.

So the question was, are we prepared to turn them over today? The answer is no, because we're in discussions --

Mr. Eisen. Yes.

Mr. Purpura. -- as you and I well know.

Mr. Eisen. So just for record, I'll make it clear for the record, there are ongoing discussions that encompass those documents with the White House. They have declined to turn them over as of today. We shall see what becomes of our accommodations. We're hopeful that they succeed.

And with that, I will turn it over to Ms. Lofgren.

Ms. Lofgren. Thank you.

Ms. Hicks, it's good to see you, and I know this is not an easy situation to be here answering questions. We thank you for appearing and doing your best to tell us what you remember of your experiences.

I have some questions. You know, when you take a look at the Mueller report, as well as some of the other information available in various indictments, it looks like, in the Mueller report, there are 170 contacts between the Trump team and Russia-linked operatives, including 28 meetings. And if you look at some of the indictments, it's probably 272 contacts and 38 names. That's a lot of contacts between Russia and the campaign, and I'm interested about that.

One of the things that struck me in reading the Mueller report -- and it's found on page 136 and 137 of the report -- the disclosure that the chairman of the campaign and Mr. Gates repeatedly provided sensitive polling data from swing States to the Russians.

Now, there was an excuse made in the report about Mr. Manafort wanting to be reinstated in the good graces of a Ukrainian oligarch, but it just seemed to me odd that the way he would do that would be to take internal polling data.

I'm wondering, did you see the internal polling data that was sent to the Russians?

Ms. Hicks. I'm not aware of anything that Mr. Manafort or Mr. Gates were doing.

Ms. Lofgren. Let me ask you this. There's a famous photograph of Mr. Putin at a Russian TV event, and present at the event were some other Russian operatives, important Russian oligarchs, Michael Flynn, and Jill Stein.

I'm wondering, did you ever hear from the President a discussion of Jill Stein in the course of his campaign and how efforts might be made to eat into the Clinton campaign by diverting voters to the Stein campaign?

Ms. Hicks. I think any candidate would be aware of either the risk or benefit when there's a third-party candidate in the race.

Ms. Lofgren. So the President did discuss the Stein campaign

with you, or you overheard his discussion of that?

Ms. Hicks. There was no concerted effort to capitalize on her candidacy, but certainly, yes, there was an awareness that that could play into the results of the election.

Ms. Lofgren. Now, did you ever hear from other campaign operatives, Mr. Manafort or others, anyone in the campaign, about a strategy to enhance Ms. Stein's vote total at the expense of Mrs. Clinton's campaign?

Ms. Hicks. I heard no serious discussions about that.

Ms. Lofgren. Were you or anyone in the campaign aware that the Internet Research Agency, which has been identified as really the Russian spy agency that meddled in our campaign, posted over a thousand times the phrase "Jill Stein," and the posts were accompanied by the hashtag, "grow a spine, vote Jill Stein," and that this was particularly oriented towards African American voters as a roster of themes that the IRA was pursuing?

Ms. Hicks. No, I was not aware of that.

Ms. Lofgren. So you never heard anything about what the campaign was doing about this other campaign, or efforts in the internet, Facebook, or any other platform, that the Russians were doing to meddle in our elections?

Ms. Hicks. Like I said, I'm not aware of any concerted effort to do anything to enhance her candidacy.

Ms. Lofgren. So did you ever see tweets or Facebook posts about the campaign? Was that something you ever saw in your

position?

Ms. Hicks. No, ma'am.

Ms. Lofgren. You never saw it. What did you do in your position?

Ms. Hicks. My title was the press secretary, but I don't think that I did many things that fell under the traditional, you know, expectations of what one might think that role entails.

My role was changed on a daily basis, but primarily I traveled with the candidate, and I organized, coordinated amongst different parts of the campaign, whether it was speech-writing or travel, messaging, general strategy, and certainly was available to the candidate whenever he needed any kind of counsel.

Ms. Lofgren. Do you know -- did you have to complete a background check before joining the campaign?

Ms. Hicks. No.

Ms. Lofgren. Do you know if anyone on the campaign completed a background check or conflicts check on others who worked in the campaign?

Ms. Hicks. I don't. I was probably a little bit of a unique case, given that I was already an employee of The Trump Organization and had worked with the Trump family for several years. So --

Ms. Lofgren. Was there any vetting process for senior members of the campaign?

Ms. Hicks. I'm not aware of --

Ms. Lofgren. That you were aware.

Who did you report to? In addition, obviously, the President you knew before, but who else in the campaign did you --

Ms. Hicks. I reported directly to Mr. Trump.

Ms. Lofgren. Only to the President, not to anyone else?

Ms. Hicks. Yes, ma'am.

Ms. Lofgren. All right. Thank you very much.

Ms. Hariharan. Really quickly, the pages that Ms. Lofgren mentioned earlier, we entered them into the record as exhibit 7.

[Hicks Exhibit No. 7

Was marked for identification.]

Mr. Lieu. Oh, I got it. Thank you.

Thank you, Ms. Hicks, for being here. Most of my questions are going to be about your tenure during the campaign. However, I'm going to ask you a few questions at the beginning about your tenure at the White House to show how absurd the objections from the White House actually are. I apologize in advance for some of these questions, but absolute immunity is actually not a thing, it doesn't exist. So I'm going to ask these questions for the purposes of the court proceeding that's going to follow.

On your first day of work at the White House, was it a sunny day or a cloudy day?

Mr. Purpura. You can answer.

Ms. Hicks. It was a cloudy day.

Mr. Lieu. And -- yeah.

Ms. Hicks. That's probably not helping my reputation, much by the way. I think people are going to laugh at this.

Mr. Lieu. And in the White House, where is your office located?

Ms. Hicks. Pardon?

Mr. Lieu. In the White House, where is your office located?

Mr. Philbin. We'll object to that.

Mr. Lieu. Okay. During your tenure at the White House, where would you normally have lunch?

Mr. Purpura. You can answer.

Ms. Hicks. At my desk.

Mr. Lieu. Okay. And would the President ever come in while you're having lunch?

Mr. Philbin. Objection.

Mr. Lieu. How often would you talk to the President on a given day?

Mr. Philbin. Objection.

Mr. Purpura. Objection.

Mr. Lieu. All right. I want to go to questions about your tenure during the campaign.

According to news reports, on September 20th, 2016, Jared Kushner forwarded you an email, and this email was about WikiLeaks had contacted Donald Trump, Jr. with information about PutinTrump.org or a pro-Trump PAC.

Why would Jared Kushner forward such an email to you?

Mr. Purpura. Excuse me. I'm sorry, sir. I didn't hear the date of the email.

Ms. Hicks. Yes. I --

Mr. Lieu. September 20th, 2016.

Mr. Purpura. Thank you.

Mr. Trout. I'm sorry. Could you repeat the question? I apologize.

Mr. Lieu. Sure. According to news reports, on September 20th, 2016, Jared Kushner forwarded you, Ms. Hicks, an email. That email was about WikiLeaks contacting Donald Trump, Jr. with information about PutinTrump.org and a pro-Trump PAC.

Why would Kushner forward that email to you?

Ms. Hicks. Most likely for situational awareness.

Mr. Lieu. Do you remember if Jared Kushner explained why he forwarded that email to you?

Ms. Hicks. I do not.

Mr. Lieu. Do you remember sending that email to anyone else?

Ms. Hicks. I don't.

Mr. Lieu. Did you discuss that email with candidate Trump?

Ms. Hicks. No.

Mr. Lieu. Okay. Do you have a copy of that email?

Ms. Hicks. Not in my possession. I'm sure the campaign --

Mr. Lieu. Okay. What's the reason you didn't discuss that email with candidate Trump?

Ms. Hicks. I don't recall my thinking at the time.

Mr. Lieu. Did you discuss it with anyone else?

Ms. Hicks. Probably discussed it with Corey Lewandowski.

Mr. Lieu. Okay. Thank you.

Anybody else, other than Corey?

Ms. Hicks. Not to my --

Mr. Lieu. Why would you discuss that with Corey Lewandowski?

Ms. Hicks. We kept in touch and shared information about things going on in the campaign and perhaps any information that might be a moment of levity amongst an intense set of circumstances.

Mr. Lieu. Did you ever receive information -- I'm sorry.

So you mentioned a moment of levity. Why would you characterize it that way?

Ms. Hicks. Just that -- well, I'll say this. If I received a link of that nature, I probably would not pursue it.

Mr. Lieu. But you had a conversation with Corey Lewandowski about it, right, that you said?

Ms. Hicks. Yes.

Mr. Lieu. Why would you not pursue it?

Ms. Hicks. I can't say for sure, but just it would be the kind of thing that would set off a red flag in my head, perhaps.

Mr. Lieu. Do you know if Corey pursued it?

Ms. Hicks. Oh, I have no idea. That was not -- that was not the intent of my sharing the information with him.

Mr. Lieu. What, other than levity, what was the nature of



the conversation you had with Corey about --

Ms. Hicks. That was the entirety of the tone of the conversation.

Mr. Lieu. And do you know if Donald Trump, Jr. pursued it?

Ms. Hicks. I have no idea.

Mr. Lieu. Okay. And you had said earlier it was a red flag. Why would you characterize it as a red flag?

Ms. Hicks. Just clicking on a link from an unknown sender amidst a Presidential election, given that there had already been information about hacks.

Mr. Lieu. The sender was Jared Kushner, though.

Ms. Hicks. Pardon?

Mr. Lieu. The sender of that email was Jared Kushner to you.

Ms. Hicks. Yes.

Mr. Lieu. But he's a known sender, right?

Ms. Hicks. Right. But the information that was in the body of the email --

Mr. Lieu. I got it.

Ms. Hicks. -- that it was described how that was obtained, which was an unknown sender.

Mr. Lieu. What did Corey say to you when you discussed this email?

Ms. Hicks. I don't recall his exact -- any exact words used, but, you know, similar reaction.

Mr. Lieu. Did you receive other emails like this from Jared

Kushner?

Ms. Hicks. There's one other email I can recall. I believe it was -- I believe the sender purported to be Guccifer 2.0. I don't know if it actually was. That's what -- that's what the -- the name said. And it was basically a demand for information about Mr. Trump's finances in the days leading up to the campaign.

Mr. Lieu. So this was an email Jared Kushner forwarded to you that Guccifer --

Ms. Hicks. I don't know if he forwarded to me. It was one he received. We were to the plane together. I remember him showing it to me. He asked me what I thought about it, if it was legitimate, what he should do with it.

My understanding is that he showed it to the Secret Service to see if they had any advice on who he should share it with, to make sure that he hadn't been hacked or that the information wasn't going to compromise his intellectual property.

And that was the last I heard of it. I don't know what he actually did with the email.

Mr. Lieu. And that email was Guccifer basically allegedly threatening to blackmail candidate Trump during the campaign, correct?

Ms. Hicks. That's my recollection of it, yes.

Mr. Lieu. Okay. Did you show that email to anyone else?

Ms. Hicks. Again, I just described the series of events, and

I had no other involvement.

Mr. Lieu. Okay. Did you show the emails that we were talking about at all to the Secret Service?

Ms. Hicks. Which emails?

Mr. Lieu. The September 20th, 2016, email.

Ms. Hicks. No.

Mr. Lieu. How about the one from Guccifer?

Ms. Hicks. I did not. Mr. Kushner did.

Mr. Lieu. Mr. Kushner showed it to Secret Service?

Ms. Hicks. Yes.

Mr. Lieu. And how do you know that?

Ms. Hicks. We were on the plane --

Mr. Lieu. Air Force One?

Ms. Hicks. No. This was during the campaign.

Mr. Lieu. I'm sorry. Of course, it was during the campaign. I apologize. Okay.

So the Secret Service is there on the plane, and you watched Jared Kushner do this or did he tell you later that he showed it to Secret Service?

Ms. Hicks. I watched him do it. I didn't follow up on how they reacted or what advice they gave. There was a lot going on, but I do know that he went over and shared it with them.

Mr. Lieu. Did Donald Trump, Jr., or anyone else in the Trump family or on the Trump campaign, report any other emails to the Secret Service, to your knowledge, about the release of

information about Hillary Clinton?

Ms. Hicks. Not to my knowledge.

Mr. Lieu. So were you surprised by this email when you read it?

Ms. Hicks. You know, it looked like junk email, but --

Mr. Lieu. I'm sorry, what?

Ms. Hicks. It looked like spam, junk email, but --

Mr. Lieu. But it was important enough for Jared Kushner to show it to the Secret Service?

Ms. Hicks. I think he was being cautious. I believe we were just a few days away from the election. I think he was more concerned less with the validity of the email and wanting to make sure -- and more concerned with wanting to make sure that his information hadn't been compromised.

Mr. Lieu. Did you know who Guccifer was at the time?

Ms. Hicks. I don't have specifics. Obviously, I had heard things in the media about him being sort of somebody who practiced the dark arts of the internet, I guess you would say.

Mr. Lieu. Okay. During the campaign, you were also working for The Trump Organization, correct?

Ms. Hicks. Yes, sir.

Mr. Lieu. During the campaign, did The Trump Organization have any financial ties to Russia?

Ms. Hicks. Not that I was aware of.

Mr. Lieu. In 2008, Donald Trump, Jr. was quoted as saying:

In terms of high-end product influence -- influx into the U.S., Russia -- Russians make up a pretty disproportionate cross section of a lot of our assets. We see a lot of money pouring in from Russia.

Were you aware of that statement at the time?

Ms. Hicks. In 2008? No, I wasn't working for the Trumps in 2008.

Mr. Lieu. But during the campaign, were you aware that --

Ms. Hicks. Yes.

Mr. Lieu. -- Donald Trump, Jr. had made that statement?

Ms. Hicks. Yes.

Mr. Lieu. Okay. Did you ever discuss that statement with Donald Trump, Jr.?

Ms. Hicks. Yes, I did.

Mr. Lieu. What did he tell you?

Ms. Hicks. He explained the context of the remark and, you know, was asking for my help in making sure that the media wasn't misrepresenting the remark or presenting it in any misleading way.

Mr. Lieu. And what would be the accurate representation of that remark?

Ms. Hicks. My understanding is that he was describing the kinds of clientele that were purchasing luxury apartments, both in New York City, Chicago, and in south Florida, all where they were either operating or in the process of developing luxury properties.

Mr. Lieu. And that clientele, they were Russians?

Ms. Hicks. I think it's well known in luxury real estate markets, especially in New York, that Russians, Chinese, there's a lot of foreign money that comes in and purchases these very expensive luxury apartments.

Mr. Lieu. During the campaign, was that still happening?

Ms. Hicks. You know, not to my knowledge. I obviously wasn't privy to the finances of the organization. Speaking -- my previous statements are based on information that I obtained obviously through my conversations with Donald Trump, Jr. and then information that I was aware of, based on my role as a director of communications for a residential real estate and hospitality company, understanding the trends of the market and who the clientele was. It's all very publicly available.

[11:17 a.m.]

Mr. Lieu. And how was the media mischaracterizing Donald Trump, Jr.'s remarks?

Ms. Hicks. I think it made it seem like there was Russian money coming into The Trump Organization in a way that was inappropriate or somehow sinister. You know, they're a luxury, globally recognized real estate company. I think it would be odd if they weren't selling to people just because they're affiliated with Russia. And there's perhaps a political perception that might complicate that.

Mr. Lieu. So you don't dispute that there was Russian money, as you said, pouring into The Trump Organization from the sale of those luxury properties?

Ms. Hicks. Again, I'm not privy to the finances of The Trump Organization. I can only describe what was relayed to me in terms of the context of the remark.

I can also say that I believe in 2008 Mr. Trump sold one of his homes for several -- I believe the price was upwards of \$90 million, and it was sold to a Russian individual. So that would also be a statement that would be categorized and align with Donald Trump, Jr.'s words.

Mr. Lieu. Okay. Thank you.

I'm going to turn it over to Congressman Neguse.

Mr. Neguse. Good morning, Ms. Hicks.

Ms. Hicks. Hi.

Mr. Neguse. And thank you for the clarification that you provided to the ranking member regarding my --

Ms. Hicks. Yes.

Mr. Neguse. -- question during the first hour.

I just have a few questions, and then I'm going to yield to my colleague here.

Just to clarify Representative Lieu's questioning around the emails, I think there are two emails that we're talking about, correct? There's the September 20th, 2016, email --

Ms. Hicks. Yes. And then --

Mr. Neguse. -- that Jared Kushner forwarded to you.

Ms. Hicks. -- he asked me if there were any other emails that Jared Kushner forwarded to me. The second email I referenced was one -- I'm not sure if it was forwarded. I know I looked at it on a computer screen.

Mr. Neguse. Exactly. And that's the one in October.

Ms. Hicks. Yes, sir.

Mr. Neguse. Okay. So with respect to that October email, is there a chance that that email was sent to Donald Trump, Jr., rather than Jared Kushner? Do you recall who the email went to?

Ms. Hicks. My understanding is it went directly to Jared Kushner.

Mr. Neguse. Okay.

And the email to Mr. Kushner, as Mr. Lieu said, this email related to an attempted effort by someone claiming to be Guccifer



to blackmail then-candidate Trump.

Ms. Hicks. That's right.

Mr. Neguse. Okay. And did this have anything to do with then-candidate Trump's tax returns?

Ms. Hicks. I can't remember specifically if it said "tax returns" in the email, but it was definitely relating to financial information, financial disclosures.

Mr. Neguse. It threatened release of then-candidate Trump's --

Ms. Hicks. That's accurate, yes.

Mr. Neguse. Okay. And you mentioned that that was reported to Secret Service by Mr. Kushner.

Ms. Hicks. That's right.

Mr. Neguse. Okay.

The email from June 3rd, 2016, from Mr. Goldstone to Mr. Trump, Jr., providing potential information regarding Secretary Clinton, was that email reported to Secret Service?

Ms. Hicks. I wasn't aware of the email at the time. I'm not aware of it being reported.

Mr. Neguse. The email on September 20th, 2016, where, essentially, Mr. Kushner is forwarding to you an email where WikiLeaks is contacting Mr. Trump, Jr., with information about a pro-Trump or Putin -- what is it -- I guess it's PutinTrump.org -- to you, that was enough of a -- I think you used the words "red flag," correct, the phrase "red flag"? That email

was a red flag to you?

Ms. Hicks. I just want to be clear. The red flag that I say I saw in my peripheral vision was not necessarily due to substance but more of just a knee-jerk reaction not to click on links where you don't know the sender.

Mr. Neguse. Sure. As you said, during the height of a Presidential campaign, receiving an email from a foreign -- in this case, WikiLeaks, communicating to the campaign, it was a red flag to you to not click on that link. That is my sense of your testimony. Is that --

Ms. Hicks. That is what I recall, yes.

Mr. Neguse. And that email was not reported to Secret Service either, correct?

Ms. Hicks. Not by me. I am not aware of what others did.

Mr. Neguse. Is it troubling to you that all of these other emails were not reported to Secret Service or law enforcement and yet this one email that you mentioned to Mr. Kushner that involved this threatened blackmail was, in fact, reported to Secret Service, where the others were not?

Ms. Hicks. No. I think you learn as you go through the process. And I'm sure Jared had a lot more information at the time he received the Guccifer email than just a month prior when Don received that link and anything else that took place prior. So you learn as you go.

Mr. Neguse. Although it was enough of a red flag for you in

September, at least you personally.

Ms. Hicks. Again, it wasn't a red flag in terms of the nature of the message. It was more about, like, just not clicking on links from people you don't know.

I shared in other testimony that I've provided that, early on in the campaign, in 2015, I clicked on a link in my personal email and, you know, compromised my personal email. So, somewhere in the dark corners of the internet, there's lots of pictures of my family dog.

But, anyway, yeah, lesson learned for me there. And, like I said, people learn as they go.

Mr. Neguse. With that, I'll yield to -- thank you, Ms. Hicks -- yield to Representative Cicilline.

Mr. Cicilline. Thank you.

Thank you, Ms. Hicks.

Did Mr. Trump ever ask you to lie during the campaign?

Ms. Hicks. I've never been asked to lie about any matters of substance or consequence.

Mr. Cicilline. My question is, were you asked to lie at all?

Ms. Hicks. Look, I addressed this in my previous testimony. I think everyone is aware of what I said. And I'd like to just reiterate that I've never been asked to lie about matters of substance or consequence --

Mr. Cicilline. Well --

Ms. Hicks. Could you let me finish? I would appreciate it.

But I'm also part of a press operation. And as I'm sure the press person that was in here earlier would attest to, we're often asked to put a positive spin on things, present the best possible version of events. But I believe I always did so with integrity.

And I'd like to also note that, just a few minutes after I was warned about the confidential nature of the session in which I shared that information, that information was being discussed on cable news, and it was my integrity that was up for debate.

Mr. Cicilline. Okay.

Ms. Hicks. So I stand by my earlier characterization of telling white lies, which I believe to be things like "No, the President is not available right now" when he is. But, no, I've never been asked to lie about matters of substance or consequence.

Mr. Cicilline. Okay. So, to be clear, you're referring to testimony before the House Intel Committee, not this committee, correct?

Ms. Hicks. Yes, sir.

Mr. Cicilline. Okay.

So I'm going to get back to my original question. I appreciate your discussion, but my question is a very specific one. I'm not asking you to decide what you think is an important lie or not important lie. My question is, did Mr. Trump ever ask you to lie during the campaign?

Ms. Hicks. Sir, I've answered the question.

Mr. Cicilline. So the answer is, yes, you have been asked to

tell lies on non- -- what you characterize as not substantial?  
You call them white lies, which I take is still a lie, right?

Ms. Hicks. I've answered the question. I stand by my  
earlier --

Mr. Cicilline. I'm asking a new question, Ms. Hicks. You  
have excluded a whole bunch of stuff you're not going to answer,  
which is fine. We have to accept that until a court says  
otherwise. We get to ask questions, and you're required to answer  
them.

My question is a very simple one. Did Mr. Trump ever ask you  
to lie during the campaign?

Mr. Trout. And she has answered that question.

Mr. Cicilline. She hasn't answered the question.

Mr. Trout. Yes, she has.

Mr. Cicilline. The question is, did he ask you to lie during  
the campaign? That's a "yes" or a "no."

Ms. Hicks. I answered the question, sir. I'm not going  
to --

Mr. Cicilline. So in any instances where the President did  
ask you to lie, what were those?

Ms. Hicks. I have described those. They are not matters of  
substance or consequence.

Mr. Cicilline. What are they? Please tell us what lies the  
President asked you to tell during the campaign.

Ms. Hicks. I've provided an example. I've said that the

President was busy when he wasn't. I've said that he had a conflict when he didn't. I've said that he would love to participate in an interview when I know that that would not be his first choice.

Mr. Cicilline. So has the President ever asked you to lie since you've left the White House?

Ms. Hicks. No.

Mr. Cicilline. You've read the Mueller report, I take it?

Ms. Hicks. No, sir. I lived the Mueller report. I have not --

Mr. Cicilline. Never read it?

Ms. Hicks. No.

Mr. Cicilline. Okay.

Did you ever witness Mr. Trump asking anyone else to lie during the campaign?

Ms. Hicks. Not that I can recall.

Mr. Cicilline. What about during the transition?

Ms. Hicks. No.

Mr. Cicilline. What about during your time at the White House?

Mr. Purpura. Objection.

Mr. Philbin. Objection.

Mr. Cicilline. I take it you are not answering that question because the President and the White House has ordered you not to answer that question?

Ms. Hicks. I'm following the guidance of the White House.

Mr. Cicilline. But when you say "guidance," it's not guidance; it's a directive, isn't it? They're not just giving you advice; they're telling you not to answer it.

Mr. Philbin. Congressman, the White House is making clear that she's not to --

Mr. Cicilline. Right. Understood. There's a witness before us who gets to answer the question.

Are you being advised or ordered not to answer the question?

Mr. Trout. She's being directed by the White House --

Mr. Cicilline. Directed. Okay.

Your lawyer said directed. That's sufficient for me.

And that basis for refusing to answer the question is not based on a privilege, correct?

Mr. Trout. Correct.

Mr. Cicilline. It's not based on an assertion of any other basis other than this newly found, expansive, complete immunity which is alleged in the letter, correct?

Mr. Trout. Yes, I think the record is clear --

Mr. Cicilline. Okay. And rejected by the committee.

Mr. Philbin. Congressman, just to clarify, this is not a newly found --

Mr. Cicilline. Well, that's for a court to decide. I think it's pretty clear it's newly found.

But I'll move on to my next question. So it's one thing not

to get answers from witnesses, but I certainly don't have to take answers from lawyers who are not part of this proceeding in terms of answering questions.

I want to turn now to the Trump campaign's -- or let me -- you would agree, would you not, Ms. Hicks, that the campaign, the Trump campaign, benefited from the hacked information on Hillary Clinton? Is that a fair statement?

Ms. Hicks. No more so than the Clinton campaign benefited from the media helping them and providing information about Mr. Trump.

Mr. Cicilline. Okay. But you agree, though, I think, in that question, that the Trump campaign benefited from the hacked information on Hillary Clinton.

Ms. Hicks. I don't know what the direct impact was.

Mr. Cicilline. Okay. You would agree that the campaign was happy to receive information damaging to Hillary Clinton, correct?

Ms. Hicks. I think that "happy" is not -- I don't think that's a fair characterization. I think "relief that we weren't the only campaign with issues" is more accurate.

Mr. Cicilline. I mean, you're aware of Mr. Trump, Jr., saying, "If it's what I think, I love it." That's an expression of admiration or fondness for information, isn't it?

Ms. Hicks. That has nothing to do with what you just asked about. You asked about WikiLeaks.

Mr. Cicilline. I'm asking about hacked information.



Ms. Hicks. But I don't -- did those emails describe hacked information?

Mr. Cicilline. Well, they -- well, what did those email describe?

Ms. Hicks. You have the papers in front of you, sir. I don't. But I don't believe they described hacked information.

Mr. Cicilline. They described --

Ms. Hicks. If it was that specific, then I'm wrong, but --

Mr. Cicilline. Okay.

During the campaign, were you aware of anyone at the campaign communicating with individuals from Russia?

Ms. Hicks. No.

Mr. Cicilline. You're sure of that?

Ms. Hicks. Look, it's obviously been a few years, and there is a lot of conflation between other testimony I've provided, what's publicly available, media reports. But my recollection is, during the campaign, throughout that time period, I was not aware of any individuals that were communicating with foreign officials from Russia.

Mr. Cicilline. Okay. During the campaign, did anyone from Russia attempt to contact you?

Ms. Hicks. Based on preparation for other interviews that I've given, I know that I was -- you know, it was also previously mentioned here today, somebody reached out to me regarding an interview. I believe that may have happened on more than one

occasion. And after the campaign, on the night of the election, I was contacted by a Russian Ambassador, or somebody that worked for the Embassy.

Mr. Cicilline. During the campaign, did you ever discuss with Mr. Trump news reports that the Trump campaign was coordinating with Russia?

Ms. Hicks. I think certainly there was discussion about how to push back on claims, unsubstantiated claims, that were being made either by the Clinton campaign or speculated about in the media.

Mr. Cicilline. So, in your role as a communications official, you had some discussions with the President about these public reports and how to respond to them. Is that a fair statement?

Mr. Purpura. I'm sorry. Just to clarify, during the campaign?

Mr. Cicilline. During the campaign.

Ms. Hicks. That's accurate.

Mr. Cicilline. And what did Mr. Trump say in those conversations?

Ms. Hicks. You'd have to be more specific. I can't repeat everything that was said in every conversation. I obviously don't remember. But if you have a specific day that you --

Mr. Cicilline. What do you remember? To the best of your knowledge, what were some of the things that you can remember that

the President said about public reports that the Trump campaign was coordinating with Russia in the conversations you had with him about this?

Ms. Hicks. That it was nonsense and that -- at the time, obviously, no one was certain that it was, in fact, Russia, and that it appeared as though it was something that the Clinton campaign had made up to deflect from the information that they viewed as harmful to their candidate, to their campaign. And it just seemed more sporadic than something that was the result of an intelligence assessment or some kind of detailed knowledge of what took place.

Mr. Cicilline. And is that what Mr. Trump told you in that conversation?

Ms. Hicks. That was the nature of the conversation, yes.

Mr. Cicilline. And did you believe him?

Ms. Hicks. I believed that the claims, unsubstantiated claims, that we were coordinating with Russia was an attempt to distract and deflect. Obviously, we knew that wasn't the case. And if I was on the other campaign, I probably would have taken a similar strategy.

Mr. Cicilline. How about the claims that the Russians were interfering in an effort to help Mr. Trump and harm Hillary Clinton?

Ms. Hicks. I don't recall when that information was first -- when that theory was first proposed publicly. So if

someone could help me with the date you're referencing, that would be helpful.

Mr. Cicilline. I'm asking, did the President -- did you have an opportunity to discuss with the President reporting that the -- public reporting that the Russians were interfering in the American Presidential election in a way to help Mr. Trump and harm Secretary Clinton?

Ms. Hicks. What I'm asking is, when did that information become publicly available? Because I don't know if that was available after --

Mr. Cicilline. Well, at any time during the campaign.

Ms. Hicks. Again, I don't know if that was something -- I'm just asking for you to clarify the dates. I don't know if that was something that was brought up during the campaign or if it was after the fact.

Mr. Cicilline. Well, do you remember at any point during the campaign becoming aware of public reporting that --

Ms. Hicks. I don't. That's why I'm asking for clarification.

Mr. Cicilline. Okay.

Did you ever discuss -- you said you had some discussions with the President about news reports that the Trump campaign was coordinating with Russia, and you described that conversation. Did you discuss those reports with anyone else at the campaign?

Ms. Hicks. I don't have a vivid recollection of those

conversations, but certainly I would have discussed them with other folks on the communications team and other senior members of the campaign.

Mr. Cicilline. How about with Donald, Jr.?

Ms. Hicks. I don't recall discussing with Don.

Mr. Cicilline. Eric Trump, did you discuss it with him?

Ms. Hicks. I don't recall discussing with Eric.

Mr. Cicilline. Paul Manafort?

Ms. Hicks. You know, I don't. I know that sounds odd. I didn't spend a lot of time or interact with Paul very much, so --

Mr. Cicilline. Rick Gates? Did you ever discuss it with him?

Ms. Hicks. Not to my recollection.

Mr. Cicilline. So you said there were other people you discussed it with besides the President. Who did you discuss it with?

Ms. Hicks. Like I said, members of the communications team, some of the folks I mentioned earlier, likely Jason Miller being one of them, folks that worked at the RNC in the war room that would have been compiling research --

Mr. Cicilline. Who would those people be?

Ms. Hicks. I listed their names earlier: Raj Shah, Michael Short, Andrew Hemming, Jason Miller, Cliff Sims, Steven Cheung.

Mr. Cicilline. You stated in response to one of my questions that these were unsubstantiated claims about Russian interference

in the American Presidential election --

Ms. Hicks. No, I said that the claims that there was coordination between the Trump campaign and Russians was unsubstantiated.

Mr. Cicilline. Did you say contacts between the Russians and the Trump campaign were unsubstantiated?

Ms. Hicks. No, I said -- when you asked me about speculation that there was coordination between Russians and the Trump campaign, I said that those were unsubstantiated claims and we regarded them as nonsense, obviously, knowing --

Mr. Cicilline. Do you still regard them as unsubstantiated claims?

Ms. Hicks. That there was coordination between Russia and the Trump campaign? Yes, I do.

Mr. Cicilline. How about that the Trump campaign spoke with and had contact with Russians during the course of the campaign?

Ms. Hicks. If you could be more specific about who you consider to be part of the Trump campaign and the alleged contacts they had, that would be helpful to me.

Mr. Cicilline. Paul Manafort? You don't today believe that Paul Manafort didn't have contacts with Russians during the course of the campaign, do you?

Ms. Hicks. Like I said, I wasn't aware of what Paul was doing. I wasn't --

Mr. Cicilline. But you are aware today?

Ms. Hicks. I am now, yes, sir.

Mr. Cicilline. Okay. So, today, you don't say that contacts between the Trump -- or claims that there were contacts between the Trump campaign and Russian operatives is no longer unsubstantiated. It's, in fact, fully --

Ms. Hicks. I didn't say that. I didn't say that.

Mr. Cicilline. So I'm asking you that question. You agree that there were, in fact, contacts between the Trump campaign and Russian operatives?

Ms. Hicks. Like I said, I haven't read the part of the report you're referencing, but based on what you said earlier, I have no reason to dispute that.

[Hicks Exhibit No. 9

Was marked for identification.]

Mr. Cicilline. Let me just finally go to Volume I, page 102, and look at footnote 589.

And I ask if we can make that available to Ms. Hicks.

If you can read into the record the sentence starting "Following the Convention" and ending with "We have no knowledge of activities past or present and he now officially has been removed from all lists etc."

Mr. Trout. I'm sorry. Could you give me the page number again?

Mr. Cicilline. Yes. This is page 102.

You asked for an example of one of, I think, almost 200

contacts between the campaign and Russian operatives. This is one example I'd like you to read into the record.

Ms. Hicks. And where were --

Mr. Cicilline. Exhibit 9 it is.

Ms. Hicks. Sorry. Where would you like me to begin reading?

Mr. Cicilline. If you can start at "Following the Convention" --

Ms. Hicks. Oh.

Mr. Cicilline. -- and read through the paragraph.

Ms. Hicks. "Following the Convention, Page's trip to Moscow and his advocacy for pro-Russia foreign policy drew the media's attention and began to generate substantial press coverage. The Campaign responded by distancing itself from Page, describing him as an 'informal foreign policy advisor' who did 'not speak for Mr. Trump or the campaign.' On September 23, 2016, Yahoo! News reported that U.S. intelligence officials were investigating whether Page had opened private communications with senior Russian officials to discuss U.S. sanctions policy under a possible Trump Administration. A Campaign spokesperson told Yahoo! News that Page had 'no role' in the Campaign and that the Campaign 'was not aware of any of his activities, past or present.' On September 24, 2016, Page was formally removed from the Campaign."

Mr. Cicilline. And you agree now that that is an example of a contact with Russians from a member of the Trump --

Ms. Hicks. Well, I take issue with the description provided



here, as it says that the campaign responded by distancing itself from Page. I don't recall any instance where we were close. There was no additional distance needed to be placed between Carter Page and the campaign.

Mr. Cicilline. Well --

Ms. Hicks. But if you categorize Carter Page as somebody who was involved with the Trump campaign, and, you know, certainly he had Russian contacts, then that is fine.

Mr. Cicilline. But didn't you instruct that inquiries about Mr. Page, if you look the footnote 589, should be answered with, and I quote, "He was announced as an informal advisor in March. Since then, he has had no role or official contact with the campaign. We have no knowledge of activities past or present and he now officially has been removed from all our lists"?

Ms. Hicks. I think we're saying the same thing.

Mr. Cicilline. Thank you.

I now yield to Mr. Deutch.

Mr. Deutch. Thank you very much, Mr. Cicilline.

Thanks, Ms. Hicks, for being here.

You said earlier that you hadn't read any of the Mueller report because you lived it. Did you review any of the portions that described you?

Ms. Hicks. My counsel has done that. And, yes -- I have not done a thorough job, admittedly, but, yes, I have.

Mr. Deutch. Do you know how many times you're mentioned in

the Mueller report?

Ms. Hicks. I don't. I believe somebody said earlier 27 pages. Is that right?

Mr. Deutch. Yeah.

And you told us earlier that you'd like to answer any questions not objected to by the White House when you were here today. Did the White House make any claims of absolute immunity from being compelled to testify before the special counsel?

Ms. Hicks. No.

Mr. Deutch. Do you know if the White House -- were there discussions with the White House about the possibility that you might not speak to the special counsel because of the absolute immunity that they could assert?

Mr. Purpura. Objection.

Mr. Deutch. So, to confirm, there was no discussion about absolute immunity to testify before Muller?

Mr. Philbin. That's not correct. We objected to the question, and she did not answer. You're asking for whether or not she had discussions with the White House while she was a senior --

Mr. Deutch. I am. Thanks. Thanks.

Are you aware of any absolute immunity --

Mr. Davis. They're part of the --

Mr. Deutch. No, I understand. I understand the objection because I've heard it multiple times. Thank you very much.

And you aware of -- and were you aware that the possibility existed that absolute immunity could have been claimed to prevent you from testifying before the Mueller investigation?

Mr. Philbin. Objection.

Mr. Purpura. Objection.

Mr. Deutch. Ms. Hicks, I'd like to -- well, let me just turn to this. On the evening of June 14th, 2017, The Washington Post reported the special counsel was investigating the President's conduct for possible obstruction of justice.

Were there any discussions that took place with the President about his refusal to cooperate with the special counsel on obstruction-of-justice claims?

Mr. Purpura. Objection.

Mr. Deutch. Were you in any meetings where there were any discussions with the President of the United States about his refusal to answer any questions about obstruction of justice?

Mr. Purpura. Objection.

Mr. Deutch. The Mueller report states that the President called Don McGahn that weekend, on Saturday, June 17th, to direct him to have the special counsel removed because of the asserted conflicts of interest.

I'd like to introduce into the record as exhibit 10 page 86 of Volume II of the Mueller report, which describes what the President said to McGahn when he called, including, and I quote, "Call Rod, tell Rod that Mueller has conflicts and can't be the

Special Counsel"; "Mueller has to go"; and "Call me back when you do it."

[Hicks Exhibit No. 10

Was marked for identification.]

Mr. Deutch. Did the President tell you that he was making those calls to Mr. McGahn?

Mr. Purpura. Objection.

Mr. Deutch. Did you ever learn that Mr. McGahn was considering resigning after that weekend as a result of the President's calls?

Mr. Purpura. Objection.

Mr. Deutch. Will you refuse to answer any other questions about whether the President directed his White House counsel to fire the special counsel?

Mr. Purpura. Objection.

Mr. Deutch. I'm just asking whether you're refusing to answer any questions.

Mr. Purpura. Again, sir, her absolute immunity applies. That was during her time at the White House as a close advisor to the President, and she will not answer those questions.

Mr. Deutch. So perhaps I should ask counsel whether it's your intent to --

Mr. Philbin. We will object to all of those questions.

Mr. Deutch. -- object to all of those questions. Thank you very much.

I refer you back to our list of privilege questions that we entered as exhibit 1, beyond this assertion of absolute immunity. You're going to decline to answer all of those questions, whether you're asserting any privileges -- now, I can go through these again, or I'll read them one time and you can tell me -- sorry?

[Discussion off the record.]

Mr. Deutch. I'm sorry. I apologize. Then I would like to enter into the record as exhibit 11 the questions that have been asked -- the first one, correct? Yeah.

[Hicks Exhibit No. 11

Was marked for identification.]

Mr. Deutch. The first question is: Are you asserting any other basis for declining to answer the question?

Ms. Hicks. No.

Mr. Deutch. Are you asserting any privileges in declining to answer the question?

Ms. Hicks. No.

Mr. Deutch. Are you asserting executive privilege in declining to answer the question?

Ms. Hicks. No.

Mr. Deutch. Will you provide any details about this matter so that the committee can assess the applicability of privileges?

Ms. Hicks. I will answer any questions that are not objected to.

Mr. Davis. I'm sorry. Where did you get this document,

exhibit 11? I don't know what this is.

Mr. Deutch. It's a list of questions that I'm --

Mr. Davis. Where did it come from?

Mr. Deutch. It's a list of questions that I'm asking now that I will then submit --

Mr. Davis. So this is a document that your staff created during the interview that you're now entering as an exhibit? Is that right?

Mr. Deutch. It's the series of questions that I'm asking right now to be entered into the record.

Mr. Philbin. I would note, just for the record, that this is simply a list of questions that will be reflected in the record as they are read out loud. So the purpose of entering this as an exhibit --

Mr. Deutch. Great. Then -- okay.

Mr. Eisen. It's simply being --

Mr. Deutch. So, then, I'll just -- please.

Mr. Eisen. Go ahead.

Mr. Deutch. I'll just finish asking the questions.

Will you provide any details about this matter so that the committee can assess the applicability of privileges?

Ms. Hicks. I will answer any questions that are not objected to.

Mr. Deutch. Will you answer any other questions about this matter?

Ms. Hicks. As long as they're not objected to.

Mr. Deutch. On January 25th, 2018, The New York Times reported that, back in June of 2017, the President had ordered Mr. McGahn to have the special counsel removed.

And I'd like to introduce as exhibit 12 pages 114 through 117 of Volume II of the report.

[Hicks Exhibit No. 12

Was marked for identification.]

Mr. Deutch. While we're finding those, since we're going to be running up against lunch, I'll go ahead and read this, and you can follow along.

Beginning "On January 26": "On January 26, 2018, the President's personal counsel called McGahn's attorney and said that the President wanted McGahn to put out a statement denying that he had been asked to fire the Special Counsel and that he had threatened to quit in protest. McGahn's attorney spoke with Mr. McGahn about that request and then called the President's personal counsel to relay that McGahn would not make a statement. McGahn's attorney informed the President's personal counsel that the Times story was accurate in reporting that the President wanted the Special Counsel removed. Accordingly, McGahn's attorney said, although the article was inaccurate in some other respects, McGahn could not comply with the President's request to dispute the story. Hicks recalled relaying to the President that one of his attorneys had spoken to McGahn's attorney about the

issue."

Now, is that what you said to the special counsel?

Mr. Philbin. Objection.

Mr. Deutch. Did you know the President was attempting to get Mr. McGahn to deny that the President asked him to fire the special counsel, even though Mr. McGahn confirmed that the President did ask him to fire the special counsel?

Mr. Purpura. Objection.

Mr. Deutch. Did the President ask you to help him get Mr. McGahn to deny the story by communicating with Mr. McGahn's lawyers?

Mr. Purpura. Objection.

Mr. Deutch. You've been instructed not to answer any questions about the President instructing his White House counsel to create a false record. That's correct?

Mr. Purpura. Objection.

Mr. Deutch. Let me just finish with this.

Mr. Purpura. Can you read back that question?

Mr. Deutch. I'll restate.

You have been instructed not to answer any questions about the President instructing his White House counsel to create a false record. Is that correct?

Mr. Philbin. Objection.

Mr. Purpura. Objection.

Mr. Deutch. Have you had any discussions, Ms. Hicks, with



Donald Trump's personal lawyers, including Jay Sekulow, about any of your testimony here today?

Ms. Hicks. No, sir.

Mr. Deutch. Have you had any discussions with any of the President's personal lawyers about your testimony?

Ms. Hicks. Here today? No, sir.

Mr. Deutch. Have you had any discussions with the President's -- any discussions with -- sorry -- the President's personal lawyers about cooperating with the government at any point?

Mr. Philbin. Objection. To the extent you're asking questions about her time as a senior advisor to the President and the White House, we object to that question.

Mr. Deutch. Great.

And as to the rest of your time and your longstanding relationship with the President, have you had any discussions with the President's personal lawyers about cooperating with the government at any point?

Ms. Hicks. No.

Mr. Deutch. No discussion -- you've not spoken about this investigation or any efforts by Congress or efforts by the Mueller team to probe the activities that are covered in the Mueller report?

Mr. Trout. Congressman, I think her answer is really limited to the period that she was not at the White House.

Mr. Deutch. I understand that.

With respect to that period, you've had no discussions with any of the President's personal lawyers?

Ms. Hicks. That's --

Mr. Trout. No. I'm sorry. I may have confused the matter. I think she is not answering as to the period of time when she was at the White House.

Mr. Deutch. Right.

Mr. Trout. Her answer is for every other time.

Mr. Deutch. I understand.

Ms. Hicks. And I'm saying no.

Mr. Deutch. Okay.

And no one associated with the President has asked to review your testimony before congressional committees prior to giving your testimony?

Mr. Purpura. Objection.

Ms. Hicks. I'm not reading anything. I don't have anything to review.

Mr. Deutch. Well -- right. Have you had discussions -- again, excluding the period during which you were a senior advisor to the President, have you had discussions with anyone from the President's team about the testimony you would provide to Congress?

Ms. Hicks. I have not, no.

Mr. Deutch. Okay. And so, just to then clarify, as to your

time while serving in the White House as a senior official, did you have any discussions with the President's personal lawyers, including Jay Sekulow or others about your testimony?

Mr. Purpura. Objection.

Mr. Philbin. Objection.

Mr. Deutch. And while serving in White House in a senior position, did you -- while serving in the White House or since, have you had any conversations with the President's personal lawyers about the time that you served as special counsel in the White House -- as a senior official?

Ms. Hicks. Sorry. I'm not following that question.

Mr. Deutch. I understand the objection. I just want to make clear that you've had no discussions with any personal lawyer of the President about the time either while you were serving in the White House or after leaving about the time you were serving in the White House?

Mr. Philbin. Congressman, the question is compound, and we'll object. Ask as to her time at the White House, and ask as to another time.

Ms. Hicks. Yeah.

Mr. Deutch. Did you speak with any of the President's personal lawyers while at the White House about your cooperation with Congress and the investigations?

Mr. Philbin. Objection.

Mr. Purpura. Objection.

Mr. Deutch. And did you speak with any of the President's personal lawyers after you left the White House about the time that you were in the White House?

Ms. Hicks. No.

Mr. Deutch. You did not.

When was the last time you spoke with the President?

Ms. Hicks. April.

Mr. Deutch. Who initiated that phone call?

Mr. Philbin. We'll object.

Mr. Deutch. Why? Based on?

Mr. Philbin. Presidential communications that -- the President -- to preserve the opportunity for the President to be able to consider --

Mr. Deutch. She's not a senior official in the White House, and it wasn't during her time as a senior official in the White House.

Ms. Hicks. It wasn't a phone call. We had dinner.

Mr. Deutch. You had dinner in April. What did you discuss at dinner?

Ms. Hicks. We discussed -- it was more of a reminiscing about events from the campaign, rallies, things like that.

Mr. Deutch. Did you reminisce about any of the things that you've been asked about during the campaign?

Ms. Hicks. Not that I recall.

Mr. Deutch. What was the tone of the conversation?

Ms. Hicks. I just said that. It was reminiscent of previous experiences.

Mr. Deutch. Did you discuss your testimony before Congress?

Ms. Hicks. No.

Mr. Deutch. Did you discuss any of the President's comments about the congressional investigation that had been made?

Mr. Philbin. We'll object to that. To the extent the questions are going into matters that relate to the President's duties, there should be an opportunity to consider whether there would be a claim of privilege.

Mr. Deutch. Are you asserting privilege over those?

Mr. Purpura. Not at this time.

Mr. Deutch. Okay. So then the witness can answer whether there was a discussion with the President at dinner in April about any of the congressional testimony not relating to the time that Ms. Hicks was a senior White House official, correct?

So were there any discussions about that?

Mr. Purpura. No, that's not --

Mr. Philbin. No. The President should have the opportunity to consider whether these communications are considered privileged. To the extent that they are concerning -- if there was any discussion, we don't know. But matters relating to discharge of his duties -- we're not asserting privilege now. That is up to the President to do. But to preserve the President's ability to consider that, we are objecting to the

question at this point.

Mr. Deutch. So, if I understand, you won't allow the witness to answer because you're reserving the right to assert privilege about a conversation at some point in the future?

Ms. Hicks. That is correct.

Mr. Deutch. I would ask one last time for the witness to answer.

Ms. Hicks. No.

Mr. Deutch. If you wanted to get a hold of the President, how would you do that?

Ms. Hicks. Sorry. Can you repeat --

Mr. Deutch. Yeah. If you wanted to reach the President, how would you get him?

Ms. Hicks. I would call him.

Mr. Deutch. Since leaving the White House, how many times have you spoken with him? Five? Ten? Twenty?

Ms. Hicks. I would say somewhere between 5 and 10.

Mr. Deutch. And, again -- well, have you spoken with the President -- April was the last time. You've not spoken with the President since you agreed to testify before this committee?

Ms. Hicks. April was the last time I spoke to him.

Mr. Deutch. So you've not spoken with him since agreeing to testify before the committee.

Ms. Hicks. That would be accurate.

Mr. Deutch. Has anyone from the President's legal team,

staff, or his family reached out to you about your testimony today?

Ms. Hicks. No.

Mr. Deutch. And, finally, do you have thoughts on the President's reaction to your testimony? Do you think the President will be angry that you're testifying before Congress?

Ms. Hicks. I don't want to speculate or hypothesize.

Mr. Deutch. Based on your lengthy and extensive relationship with the President, do you think, based on that, just based solely on your experiences with him, that he might be angry about your testifying before Congress today?

Ms. Hicks. I think the President knows that I would tell the truth, and the truth is there was no collusion. And I'm happy to say that as many times as is necessary today.

Mr. Deutch. And, also, the President said there was essentially no obstruction. Does that mean -- what do you think he meant by that?

Ms. Hicks. I'm here to talk about the campaign.

Mr. Deutch. No, I understand, but you just told me the things the President's been repeating. So he's also been repeating comments about obstruction of justice where he says there's essentially no obstruction of justice. What do you think he means by that?

Ms. Hicks. I'm here to comment on events that happened during the campaign. That's what I'm doing.

Mr. Deutch. Right. So --

Mr. Davis. I think your hour is up, sir.

Mr. Deutch. I understand.

So, just finally, you're prepared to say no collusion, which was clearly about the campaign, but you refuse to answer any questions about obstruction of justice, which also has to do with the campaign.

Ms. Hicks. I'm not refusing. Is there a specific question that you're asking?

Mr. Deutch. Yeah. Yeah.

Mr. Davis. Your time is --

Mr. Deutch. Absolutely. You've offered up that there was no collusion in talking about the campaign. I asked about the President's comments, "essentially no obstruction," why do you think he used the word "essentially"? And on that, you're saying you won't answer because it has to do with the campaign. I'm pointing out the fact that you were willing to talk about one and not the other.

Ms. Hicks. That is not what I said.

Mr. Trout. I will object. I think that mischaracterizes what she has said. I think it mischaracterizes the questioning.

Mr. Deutch. I don't, but --

Mr. Davis. Sir, but the hour is --

Mr. Deutch. I understand. And guess what. We'll continue this when we come back after lunch. But I thought it would be



appropriate to try to clear the air because of what we just heard before we take this break, but I'm glad to break for lunch.

Ms. Hariharan. We will go off the record now. It is 12:01.

[Discussion off the record.]

Ms. Hariharan. We will come back at 1 o'clock.

[Recess.]

[1:07 p.m.]

Mr. Eisen. We are back on the record at 1:07, and it is the minority's hour.

Mr. Collins. Thank you. And, again, Doug Collins, Ranking Member Judiciary. As we come along with this, I think the interesting thing that I wanted to settle out, because there is a conflict here with -- coming up with votes and I know there will be some questioning on -- is just reiterating, you know, some of the things that have been very frustrating for me in this hearing, especially that started out when the chairman laid forth a very long statement on decorum and issues.

And we had -- the witness' counsel had to be, you know, reminded -- there were members taking pictures at this. There was also live tweeting of this event. This is -- again, it really takes away from the decorum. And whether you agree with this, which I don't, or don't agree with it is irrelevant. The decorum here was botched and became really what I've said this was is -- for a long time is a photo opportunity and a show.

At this point, I do always like to open up -- when we switch back, I will open it up. You've had several lines of questioning now from both majority and minority side. Is there anything that you would like to expound upon that you feel like you didn't get enough ability to answer? Is there anything that you would like to say, Ms. Hicks?

Ms. Hicks. No, sir. Thank you for the opportunity.

Mr. Collins. Okay. All right. No problem. And we will continue this. At this time, I do want to yield to the gentlelady from Arizona for just a few moments.

Mrs. Lesko. Thank you. And just for the record, I'm Congresswoman Debbie Lesko from Arizona, and mine is more of a statement instead of a question, Ms. Hicks. It's very frustrating to me this continual probes, subpoenas, contempt of Congress, actions taken by my Democratic colleagues after almost 2 years of special counsel investigating, you know, claims that there was collusion, coordination, conspiracy with Russia, 2,800 subpoenas, 500 bench warrants, 40 FBI agents, I forget how many attorneys, 19 attorneys.

For my Democratic colleagues to think they are going to come up with something more than all these FBI agents and attorneys and something is -- I just don't understand it. And so, in the time that I was here today listening to some of the questions, I felt like they are trying to come up with something that all of these subpoenas, bench warrants, attorneys weren't able to come up with.

And the fact is that the Mueller report, which I have, you know, several copies of right here, has said there was no collusion, coordination, conspiracy with the Trump administration, nor any American with Russia to influence the 2016 election. And also, there were no charges of obstruction of justice.

So, again, I call on my Democratic colleagues to please, let's move on with America's business. I was elected to get big

things done, not to continually relitigate this for publicity purposes. And I believe my Democratic colleagues are trying to influence the 2020 presidential election, using taxpayer expense, and I just think it's a terrible thing.

Mr. Collins. All right. With our side, that will be -- from this round on our side, we, again, will have another round if need be, but this is our round, we will yield back to the majority.

Mr. Eisen. Okay. The majority is going back on the record at 1:13.

BY MR. EISEN:

Q Ms. Hicks, are you aware of media reports that you maintained a diary during your -- at any time during your work with Donald Trump?

A Yes, I'm aware of those reports.

Q And what are you aware of?

A Just exactly what you described, that I maintained a diary during my time working for Mr. Trump.

Q And did you?

A I did not, no.

Q Did you maintain any form of keeping notes during your time working for Donald Trump?

Mr. Philbin. Can we clarify whether this question is extending to all time periods or only up to the time she became senior adviser to the President?

BY MR. EISEN:

Q I'm going to break the question down. Let's start with the period up to and including the election. Did you maintain any form of note taking, regularized note taking during that period?

A I guess it would depend on your -- the kind of note taking you're describing. If you're talking about notes pertaining to my professional responsibilities, obviously yes. If you're talking about notes like, dear diary, great day, no, I did not.

Q Do you have any idea how this -- these media reports that you maintained a diary originated?

A I don't know.

Q And let me ask the same question as to the transition period. Did you maintain any regularized form of note taking during the transition?

A No, sir.

Q Did you -- I'll ask this on both the campaign and the transition. Did you have a little notebook that you carried around with you like people sometimes do to keep running track of events?

A Not that I recall. You know, loose papers maybe. Things were -- they were happening on the fly most of the time. I'm sure I have a lot of Trump Hotel stationery, loose papers somewhere.

Q And how did you maintain those loose papers during the period of the campaign?

A Usually I had a to-do list, and I would write down, you know, requests for the President, the candidate at the time, or people I needed to speak to, mostly reporters, other things I needed to get done, and I would sort of check off as I go, and once the items on the list either expired or were completed, I would start a new list.

Q And have you retained those campaign documents?

A Not that I'm aware of, those. I don't think so, no.

Q Same question on the transition. How did you keep track of things day-to-day?

A Same, same way.

Q And where are those transition materials, those papers you wrote on, if you know?

A I don't know where those are.

Q Did you have a practice of retaining any of that paperwork? I'll ask now for the campaign and the transition in the interest of time.

A No. I mean, these were notes probably only I would understand, both given my handwriting and the words that I would jot down, like maybe just the initials of a reporter or the name of an outlet, things like that.

Q And I'm not going to go too deep into the details, but did you maintain any personal form of note taking or recording events during the campaign or the transition?

A Not with any regularity, no.

Q When you say not with any regularity, were there some things that you did on a less-than-regular basis in that regard?

A I think there were a couple of occasions where I jotted down things I wanted to remember, especially as we sort of approached the final weeks of the campaign, you know, memorable interactions with supporters of the candidate or special details of events, but nothing -- like I said, it was very infrequent, sporadic, nothing remarkable.

Q And those infrequent and sporadic memorable jottings, where are those today?

A They -- most of them, I believe, are located on my laptop.

Q And were those reviewed for the purposes of the document and production that was made in response to the voluntary request or the subpoena, if you know?

A My lawyers handled the document production, and --

Mr. Trout. I believe they were reviewed and all responsive documents were -- have been produced.

Mr. Eisen. Okay. I'd like to ask you the same questions about the White House. We're going to pause to see if there is an objection to asking those -- that identical series of questions regarding Ms. Hicks' White House tenure.

Mr. Philbin. If you could --

[Discussion off record.]

Mr. Philbin. We would object to questions about maintaining

regular series of notes connected with her service as a senior adviser to the President, things related to her job. If there is a question, did you maintain a purely personal diary about entirely personal things, we would not object.

BY MR. EISEN:

Q Did you, during your tenure in the White House, maintain a purely personal diary in whatever form? You understand when I ask that question I mean --

A I did not, no.

Q -- I'm including the periodic jottings, memorable events and other things of the kind we've talked about?

A I did not, no.

Q Have you done that since leaving the White House?

A Yes, I have, actually.

Q And in the materials that you have created of this kind since leaving the White House, could you describe to me what they are?

A Very similar to what I previously described, anything memorable, you know, notable interactions that were special to me or -- that left an -- you know, an impact on me and things that I wanted to obviously remember from my time there, hopefully to share with people more familiar to me than the faces I'm looking at now down the road. But I believe those were also reviewed by my counsel in response to the request for documents.

Q We won't take any offense to your desire to share that



information with more familiar faces than ours.

The -- do those materials, which, if I understand correctly, they were created post your White House service. Just remind me what day you left the White House?

A March 30.

Q We're talking about post March 30.

Mr. Trout. 2018.

BY MR. EISEN:

Q Of 2018. What form do you maintain those materials in?

A They are notes on my iPhone.

Q You use the Apple iPhone Notes --

A Yes, sir.

Q -- the thing that looks like a little notepad?

A Yes, sir.

Q And how voluminous are those?

A They are not voluminous.

Q And have your attorneys been through those to look for responsive documents?

A Yes, sir.

Q And do those -- do some of the materials in there relate to your time in the White House? We will just take a yes or no, and we will give you an opportunity to --

A Yeah, I'm just -- I'm just thinking. You know, a lot of it is things from the campaign that I remembered, but I'm sure there's things in there that pertain to my time in the

White House.

Q And is there any transition material in there as well, if you know?

A I don't know.

Q And roughly, how many of those -- do you have it all in one note, or is it multiple?

A There's probably about three or four separate notes, and it's like a list of words, basically, that just jot my -- jog my memory to remember a certain series of events, a person, a place.

Q And other than these three or four notes, any other materials that you've maintained post White House service that would record or recollect events before that?

A Not that -- no.

Q And forgive me for asking, but do you have any plans to write a memoir of your time with Mr. Trump?

A It depends how many more of these sessions we have to do. These guys are expensive. I do not, no.

Q Have you ever prepared a proposal to do that?

A I have not, no.

Q Give me one second.

Okay. We were in and out some of these questions. I just want to establish for the record the -- we do sometimes enjoy a soundtrack here at the committee. I just want to establish for the record just quickly, how did you first become involved with the Trump family?

A Sure. So I worked at a public relations firm, and Ivanka Trump was one of the clients that I was assigned to work with there, so I got to know her. And my role with her expanded over time, and I met the rest of the family and started to work more broadly with the Trump Organization, and their real estate hospitality and golf assets.

Q When did you first meet Donald Trump?

A June of 2013.

Q And when did your work switch to the Trump Organization?

A I was hired in August of 2014.

Q How did you become involved in the Trump campaign?

A I was working at the Trump Organization at the time as the director of communications, and Mr. Trump asked me if I would join the campaign, that he was thinking about running for President, and would I like to be his press secretary, and I said yes, and that was it.

Q Did you take a trip to Iowa in January 2015?

A We did, yes, sir.

Q Can you just briefly tell me about that?

A It was my first trip with Mr. Trump in this capacity. We had traveled for our Trump Organization work together before, but we went with a small number of people to, I believe, an event called the Freedom Summit in Des Moines, Iowa, and it was my first exposure to any kind of political conference, and certainly my first exposure to the events leading up to the Iowa caucus a year

later.

Q Was that trip to Iowa before or after you were formally designated as press secretary?

A You know, it was -- it was before I was formally designated as press secretary, but after he had asked if I wanted to participate in the campaign if he ran for President.

Q Was there any allocation of your time or expenses as between the Trump Organization and the campaign in connection with that Iowa trip?

A No, not that I'm aware of. Shortly afterwards though, once an exploratory committee was formed, there was a conversation about how my time would be split, how that would be designated in terms of my salary, and what my obligations were to make certain folks aware of how I was spending my time and all of those good rules that we followed.

Q And about when was that, if you recall?

A The exploratory committee was formed in early March of 2015, so leading up to that, so probably sometime in mid to late February.

Q And I take it that you were given a set of instructions on how to allocate time and expenses in connection with the exploratory committee?

A That's accurate.

Q And can you give me a sense of the breakdown between the Trump Organization and the exploratory committee around the, let's

say in the -- that quarter when the distinction was first made, in your time and expenses?

A Sure. No expenses that I'm aware of, that I recall. And time, you know, it was really split out during the week. Monday through Friday, I worked at the Trump Organization, probably spent about 10 percent of my day attributing resources to the presidential exploratory committee, and then we traveled on the weekends to different summits and speaking opportunities.

Q And could I ask you, please, to characterize your relationship, just describe it in your own words, with Donald Trump during the campaign period. If it evolved over time, feel free to tell us how it evolved.

A Sure. So early on, I was an employee, and I, you know, did everything I could to try to accommodate his needs and his requests from a communications standpoint. He obviously has very -- he has a lot of experience in dealing with the media, so he was willing to provide a lot of guidance to me, which was much appreciated, given how inexperienced I was. And over time, obviously, we grew closer. The relationship became stronger. And, you know, I think we both trusted each other and worked very well together.

Q And you've been described publicly like a daughter to him. Do you agree with that characterization?

A You would have to ask Mr. Trump that.

Q Did he ever tell you how to describe your relationship

with him? During the campaign now, I'm asking.

A No.

Q And did the relationship change between the campaign and the transition in any material ways?

A No.

Q And I'm not going to ask you to get into the substance of the following question -- I see Mr. Philbin perched on the edge of his chair -- but I am going to ask you, did the relationship change between the White House and what came before?

Don't -- just yes or no. You won't get into the substance.

A No.

Q And how has the relationship changed since you left the White House?

A Well, I don't see him every day. I'm no longer an employee. So fundamentally, it's very different, but I don't have anything specific to add.

Q Were there ever times when you were making public statements about Mr. Trump in the campaign or transition when you checked with him first before making those statements about him?

A Yes.

Q Was that a general matter? Would you check with him before making public statements about him?

A I wouldn't say it was a requirement, but if I had the opportunity to check with him, of course, I would rather say something that he wanted me to say rather than say something that

he was less than pleased with.

Q And were there -- how frequent were the occasions when you made public statements without checking with him first? Again, just the general order of magnitude.

A Well, so you're asking two different things. You asked if I made statements about him specifically without checking with him, to which I answered that I would -- my preference was to check with him. My preference was to check with him regarding statements that weren't specifically about him as well, however, it was much more frequent that just the demand for the job required --

Q Got it. Got it.

A -- a faster response.

Q And there's a point in the Mueller report -- and I'm actually not going to ask you yet about the page in the Mueller report, but there is a page in the Mueller report where there is a description of you suggesting to Mr. Trump that something be taken out of an interview. And I'm going to ask you some questions about that with respect to the campaign and the transition, if I may.

Mr. Philbin. Sorry. If you could clarify, when was the interview?

BY MR. EISEN:

Q Do you want me to -- do you want me to do the Mueller report now? I'm going to hold that -- I'm going to -- I'll hold

that for later.

I'll ask the witness, do you know the episode in the Mueller report that I'm referring to?

A I do, sir.

Q So I'm going to save that -- the Mueller report itself for later. But I want to ask more generally about the practice of asking a reporter to take something out after it has been said. Can you describe what your practice was in that regard in the campaign and transition, if you had one?

A Sure. I think it's pretty common practice amongst communications professionals that they try to ensure that their principle comes across as good as possible, as an effective messenger, and as someone who is hopefully relaying something specific. After all, that's generally the purpose of an interview. And anything that distracts from that core message is sometimes best not included.

And I think anybody that has any experience in PR would say that that is fairly common practice to make that request. I would say that it's very rare for the request to be fulfilled, but there's no harm in asking.

Q And just -- if you can think of any occasions when you made that request to a print reporter or radio, television during the campaign or transition, can you think of any times when that happened?

A Sure, yeah. Look, most of the time it's -- it is maybe



not a request to omit the information altogether, but if there's going to be something released at one point, and then a latter portion of the interview released at another point in time, Hey, would you mind putting this in this section of the interview, we have something coming up and we want this to be the primary message of the day, things like that.

Q What about holding and getting the reporter to hold it back altogether? Were there occasions when that happened in the campaign or transition that you can think of?

A Only if I was really lucky. No, I'm sure there were occasions. Nothing is coming to mind, but --

Mr. Eisen. Okay. We have members who are back with us, so Mr. Cohen.

Mr. Cohen. Thank you. I'm Steve Cohen from Memphis, and we had another hearing, which I chaired. I don't know if these questions were asked, but if they weren't, I want to ask them. During the campaign, there was a meeting at Trump Tower with one of the sons, I think it was Jr., and the Russian lady that came and the alleged story about we have information that might be bad about Hillary Clinton, and then they talked and they -- whatever. Do you know the meeting I'm talking about?

Ms. Hicks. Yes, sir.

Mr. Cohen. Did you have any knowledge of that meeting before it was scheduled?

Ms. Hicks. No, sir.

Mr. Cohen. Were you on the Air Force One at the time that President Trump, then-Candidate Trump maybe consulted with some people about the answer that Donald Jr. should give to the press?

Mr. Trout. Well, just --

Mr. Philbin. Objection.

Mr. Cohen. He wasn't President.

Mr. Purpura. No, he was. You said Air Force One. That's what we're trying to clarify.

Mr. Cohen. Well, he wasn't on the Air Force. He was on Trump One. Sorry.

Ms. Hicks. But you're -- I think -- I'm sorry. I think you're confused. That took place on Air Force One. He was President.

Mr. Purpura. Right.

Mr. Cohen. And the Trump Tower meeting was before -- was it that time?

Mr. Philbin. I believe that the meeting was in 2016.

Mr. Cohen. Right.

Mr. Philbin. But the discussion that I believe you're referring to didn't take place until 2017.

Mr. Cohen. So when he drew up a response on the airplane and --

Mr. Neguse. That was in 2017.

Mr. Cohen. That was in 2017?

Mr. Trout. Yes.

Mr. Cohen. So before he was President, did you know anything about that meeting?

Ms. Hicks. No, sir.

Mr. Cohen. None whatsoever?

Did you have any knowledge of any meetings that Mr. Trump had with Mr. Kislyak?

Ms. Hicks. No, sir.

Mr. Cohen. How about anybody else with the campaign and Mr. Kislyak?

Ms. Hicks. At the time they occurred? After? Can you be more specific?

Mr. Cohen. No. Just tell me what you know about any meetings that the campaign had with Mr. Kislyak, if you would.

Mr. Philbin. Well, let's limit the answer to what you knew during the campaign or in the transition.

Mr. Cohen. Right.

Ms. Hicks. I don't -- I don't recall being aware of the meetings that took place at the time, but later learned about, I believe, the meeting General Flynn and Jared Kushner had with Ambassador Kislyak during the transition.

Mr. Eisen. I just want to make clear for the record, you're objecting -- the White House is objecting to the question to the extent it covers post January 20, 2017?

Mr. Purpura. Right.

Mr. Philbin. Now, to the extent that the question is to

elicit information she learned in her capacity as the senior adviser to the President after January 20, yes.

Mr. Eisen. So we probably should stipulate this for the record. It will make things go much faster and it will speed up our review of the morning transcript as well. When the White House says objection, that is an absolute immunity objection and none other, correct?

Mr. Philbin. For the most part. There was an incident earlier where we were talking about something that occurred during the transition period that could relate to the President-elect's preparation for making decisions as a President where we might assert a different privilege. So for the most part, the objection will be based on absolute immunity.

Mr. Eisen. All right. But you didn't assert the different privilege earlier. So far, the privilege, when you've objected, it has been absolute immunity so far.

Mr. Purpura. That's correct.

Mr. Eisen. So we're going to stipulate for the record, barring an objection from anyone -- I apologize to Mr. Cohen, but I just want to have a clean transcript -- that when there's a White House objection, that's an absolute immunity objection, unless otherwise stated. And Ms. Hicks is declining to answer that question. It saves us from having to go through that over and over again. Is that agreeable, Ms. Hicks? Mr. Trout?

Mr. Trout. Agreeable.

Mr. Eisen. Okay. White House?

Mr. Philbin. Yes, unless we specify something else, a single-word objection will be absolutely amenable.

Mr. Cohen. All right. So with all those caveats, before January 20, 2017, did you have any knowledge of any discussions of Russian sanctions?

Ms. Hicks. No.

Mr. Cohen. There was no discussions at all with Mr. Trump and you weren't privy to them about Russian sanctions that we had issued? You're sure of that? Think about it.

Ms. Hicks. I am thinking. Thank you. You know, there was -- there was a phone call obviously between General Flynn and the Russian ambassador. There was news reports after that where it was unclear what was discussed, but that would have been the only context in which Russian sanctions were brought up in my capacity as communications adviser.

Mr. Cohen. Anything about adoptions? The Russian adoptions by American citizens come up during your time before January 20, 2017?

Ms. Hicks. No, sir.

Mr. Cohen. So that wasn't an issue either? It wasn't something you all discussed? It wasn't something the President thought was an important issue?

Ms. Hicks. No, sir.

Mr. Cohen. Did the meeting -- you had no knowledge of that

meeting, or you did have knowledge of the meeting in Trump Tower?

Ms. Hicks. I did no knowledge of that meeting.

Mr. Cohen. You had no knowledge of it. You only had knowledge of it after the --

Ms. Hicks. I learned about the meeting in June of 2017.

Mr. Cohen. Okay. Okay. During the campaign did you learn anything at all about Mr. Stone and his relationship with WikiLeaks?

Ms. Hicks. No, sir.

Mr. Cohen. That never came up at all? There was no discussion of Mr. Stone and his connections with Mr. Assange?

Ms. Hicks. Not with me, no.

Mr. Cohen. Did anybody else where you overheard a conversation?

Ms. Hicks. Not that I'm aware of.

Mr. Cohen. And you don't remember any discussions at all about WikiLeaks? Well, you do know about WikiLeaks. You discussed that earlier. What did you know about WikiLeaks and their divulgence of information about the emails of Hillary Clinton and Mr. Podesta?

Ms. Hicks. I know what was publicly available and nothing more.

Mr. Cohen. Nothing in the campaign at all?

Ms. Hicks. Pardon?

Mr. Cohen. You never heard anything at all being privy to

Mr. Trump -- you were with him every day. Were you not?

Ms. Hicks. I was, yes, sir.

Mr. Cohen. And you never heard anything from him about WikiLeaks?

Ms. Hicks. That's not what I said. I said the information I knew about WikiLeaks was what was publicly available.

Mr. Cohen. So you didn't know anything from being around -- you never heard Mr. Trump talk about it?

Ms. Hicks. No, sir.

Mr. Cohen. Did you hear anybody in the campaign talk about it?

Ms. Hicks. No, sir.

Mr. Trout. You mean other than what was discussed in the public domain?

Ms. Hicks. Yes. Earlier I made a clarification that, you know, sometimes there would be speculation about if there would be more emails or information released, but that was prompted by things in the media so -- and, obviously, it wasn't, you know, certain certainty. It was with speculation and skepticism.

Mr. Cohen. And I was here earlier, and you said you'd had no knowledge -- any information about hush payments to Ms. Stormy Daniels. How about to Ms. -- was it -- McDougal, Miss August?

Ms. Hicks. I wasn't aware of anything -- I wasn't aware of a hush payment agreement. I was aware of an arrangement she had with the National Enquirer based on their statement that they

provided to The Wall Street Journal when the article was written on November 3 or 4 of 2016.

Mr. Cohen. And did you have that knowledge from discussions or overhearing discussions with Mr. Trump or other members of the campaign as the family?

Ms. Hicks. I had that knowledge as David Pecker provided the statement that they planned to provide to The Wall Street Journal to me just before it was given to the reporter as a heads-up.

Mr. Cohen. You never met either Ms. Daniels or Ms. McGuire -- McDougal?

Ms. Hicks. No, sir. I was in high school in 2005.

Mr. Cohen. Time flies.

Mr. Collins. That hurts.

Mr. Cohen. Time flies, yeah.

Ms. Hicks. I had to get one in. You guys have been at me all day.

Mr. Cohen. Yeah. You'll be happy to know Paul McCartney, who was in Wings, had his birthday recently, yeah.

I think I'm going to let you do that. I'm going to go vote, otherwise John Stewart will say bad things about me. Thank you, Ms. Hicks.

Ms. Hicks. Thank you so much.

Mr. Eisen. Mr. Neguse.

Mr. Neguse. Good afternoon, Ms. Hicks. I just want to follow up on a point this morning that we talked about, and



Mr. Cohen kind of followed up as well. I think you've confirmed for the record that you weren't aware of the -- we will call it the Trump Tower meeting in June of 2016, that you didn't learn about that until the following year, as well as a variety of other instances that we've talked about this morning and this afternoon. You are aware -- have you read the special counsel's report?

Ms. Hicks. Not in its entirety. I've read little pieces of it.

Mr. Neguse. Okay. Earlier in response to a question from my colleague, Representative Cicilline, you said there was no collusion. Is that right? That was what you said in response to a question.

Ms. Hicks. That's accurate, yes.

Mr. Neguse. You have not read in full volume one of the special counsel's report, correct?

Ms. Hicks. That's correct.

Mr. Neguse. In volume one, I represented to you that there is detail surrounding over 120 contacts between members of the Trump campaign, and various Russian operatives and satellites and so forth. You wouldn't have anything to dispute that, correct?

Ms. Hicks. Again, I don't know the exact nature of those contacts and how I might characterize the relationship of the folks described in and what their actual affiliation with the campaign or lack thereof would be, but I have no reason to dispute that those contacts took place.

Mr. Neguse. Well, you know, the two examples that have come up most frequently today, right, the President's, then candidate's, son and senior adviser meeting with someone who is purporting to provide information from the Russian Government regarding the then-candidate's opponent and the campaign chairman, Mr. Manafort, sharing polling data with a foreign national. Those would clearly be within the ambit of people who were affiliated with the campaign directly or indirectly, correct?

Ms. Hicks. Yes.

Mr. Neguse. Okay. My question is, you'll recall this morning we talked about the notification to the Secret Service around the October 2016 email to Mr. Kushner. If you had received the email from Mr. Goldstone in June of 2016, would you have notified Secret Service?

Ms. Hicks. I'm not going to speculate on a hypothetical.

Mr. Neguse. Well, I -- it's -- I'm not asking to speculate. I'm asking whether or not you would if --

Ms. Hicks. I think that's speculation.

Mr. Neguse. -- a foreign national --

Ms. Hicks. I'm not a lawyer, but --

Mr. Neguse. Well, okay, let me take a step back. In October of 2016, you clearly agreed with Mr. Kushner alerting Secret Service regarding the email he had received, correct?

Ms. Hicks. I didn't -- I didn't say that. You're putting words in my mouth.

Mr. Neguse. Did you not -- you don't agree with him notifying Secret Service?

Ms. Hicks. I didn't have an opinion on it one way or another. It was --

Mr. Neguse. You have no opinion of it today?

Ms. Hicks. -- his choice to do that. I --

Mr. Neguse. So you have no opinion as to whether or not Mr. Kushner should have or should have not alerted Secret Service regarding the October 2016 email?

Ms. Hicks. I --

Mr. Neguse. Presumably you would agree that he should notify Secret Service, which is what he did?

Mr. Trout. Objection.

Mr. Neguse. Well, you can answer the question. So your position is you have no opinion one way or the other about what he --

Ms. Hicks. I've never put much thought into it, is the honest answer.

Mr. Neguse. I guess I'm asking you, sitting here today, as you put thought into it whether or not you agree or disagree.

Mr. Trout. I'm going to object to that. I just don't think it has any relevance at all as to what her opinion is today about events that have occurred. She is here to answer questions about things that she observed in real time.

Mr. Neguse. Your objection is noted. And it sounds like

you're refusing to answer the question and so that's -- we will move forward. I would say that as a fact witness during this event in question, it's fair to ask her whether or not she agreed when she was shown an email from Gucifer or someone purporting to be Gucifer, and when Mr. Kushner said I'm going to alert the Secret Service whether or not she agreed with him taking that step as a senior campaign official. But if she refuses to answer the question, we can proceed --

Ms. Hicks. I'm happy to answer the question. I think it was a fine thing for him to do. I think that, like I said earlier, better safe than sorry, especially in these last days of the campaign. I just -- I probably wouldn't have put as much validity behind it as he did, but I think his caution is a good thing, and I don't have anything else to add.

Mr. Neguse. Thank you. And applying that same reasoning, would you apply that same reasoning to the June 2016 email that went to Mr. Trump Jr.?

Ms. Hicks. I think they are two very different situations, and like I said before, I'm not going to speculate on a hypothetical.

Mr. Neguse. Thank you. I am going to turn it back to Mr. Eisen.

BY MR. EISEN:

Q Okay. On June 12, 2016, Julian Assange claimed in a televised interview to have emails relating to Hillary Clinton

which are pending publication. Do you recall that on or about that time?

A I don't, no.

Q Do you recall any public announcements by anyone associated with WikiLeaks in the summer of 2016 that documents would be forthcoming?

A I don't, no.

Q When is the first that you remember learning that WikiLeaks might have documents relevant to the Clinton campaign?

A Whenever it became publicly available. I think my first recollection is just prior to the DNC Convention.

Q And what was your reaction when you learned that?

A I don't recall. I think before I described a general feeling surrounding this topic of not happiness, but a little bit of relief maybe that other campaigns had obstacles to face as well.

Q And I know we've touched on this but I just want to make sure we get it into the record. What's your first recollection of discussing this issue with Mr. Trump?

A Probably around that same time.

Q What do you remember about that discussion?

A I don't recall anything specific.

Q Do -- can you remember anything about his affect, how he -- his affect?

A No.

Q Did you have a view on whether WikiLeaks actually had that material?

A I don't understand.

Q Did you believe it was a true report that WikiLeaks actually had material on --

A I believe that when I've learned about this, that they were already releasing material, so I had no reason to question whether or not it was real.

Q And what do you recall, if anything, about Mr. Trump's reaction to the release of those materials?

A Again, I don't recall anything specific.

Q And we've talked a little bit about exchanges with members of the Trump family, and either I or someone else asked you about Eric Trump and the receipt of an opposition research file. And I'll take that exhibit -- took advantage of the lunch break to get it for you. What exhibit are we on?

Ms. Istel. We will mark it as Exhibit 13.

[Hicks Exhibit No. 13

Was marked for identification.]

Mr. Philbin. Do you have copies for the minority members and for us?

Mr. Eisen. If the White House lawyers want to come up to the table to look at the copy, they are welcome to.

Mr. Purpura. We're okay. We have a set.

Mr. Eisen. Oh, you've got one. Good. Okay.

BY MR. EISEN:

Q Ms. Hicks, would you take a look at exhibit 13, please.

A Page 13? No. This document that your lawyer has handed you, this big document as exhibit No. 13. It starts with the table of contents.

Mr. Philbin. And just for the record, this is a 211-page document.

BY MR. EISEN:

Q I do not intend to ask the witness about all 211 pages. I'll try to limit myself to 199.

Just have a look at the first few pages, if you would for me, Ms. Hicks, table of contents on just the beginning of it. Is this the -- ready?

A Yes, sir.

Q Is this the document that Eric Trump sent you?

A I don't know. I would have to see the email, but --

Q I'll just ask you to speak into the microphone for the --

A I can't say for sure. I would have to go back and look at the email. That was 3 years ago, and I'm going to guess several thousand emails ago, but it does look familiar.

Q The email, do you know where we could get a copy of that email?

A The campaign would have that email.

Q That was on your official -- was sent to you on your

official campaign account?

A My guess is yes. We obviously searched my phone, so this has got my text messages.

Q Okay. Very good. We will endeavor to get that from the campaign. Do you --

A But as you'll note, this information is all publicly sourced, so it isn't exactly a bombshell opposition research document. It's a compilation of publicly sourced articles, but --

Q Did you ever discuss this document with Donald Trump?

A If this is the document that Eric shared with me, yes, I did.

Q Tell me about that conversation, please.

A You know, he asked what was contained in the document based on a quick glance. I said essentially what I just said to you, that this is a summary of publicly sourced information, number one; and number two, it's all out there. It already has been, but now it's just all out there at once versus somebody's attempt to perhaps bread crumb this out over the months ahead.

Q And what was his response to that?

A Not much.

Q Was he pleased or displeased?

A I think he was indifferent.

Q And do you know what the source of this document was?

A I don't, no.

Q Do you recall what the source of the document Eric sent



you was?

A I don't. I recall Eric's message maybe mentioning something about the source being either the DNC, or affiliated with the DNC, something of that nature. But I don't recall the exact phrasing.

Q In your experience as a campaign official, is it valuable to have the opposing political party's opposition research dossier, even if it's -- even if everything in it is public?

A Well, you know, we have this thing called Google now, so it's certainly helpful, I guess, to have it compiled in one place, but I would say, jump ball on this one.

Q Is it helpful to know, again, asking during your -- asking given your experience as a campaign official, is it helpful to know what your opponent, or the political party of an opponent might think is the opposition research as to your candidate?

A Yeah. Look, I -- maybe if the candidate wasn't Donald Trump, someone who had been in the arena for 40 years and just gone through a year-long primary where he defeated 17 professional politicians, this might be more helpful. But at that point in time, we were pretty familiar with the kinds of criticisms and attacks that any opponent would put to Mr. Trump.

Q Did you do anything else with the opposition research report that Eric Trump passed to you in the --

A I did not personally. It's possible that either Eric or myself passed it onto the war room at the RNC, but, no, I didn't personally do anything with it.

Q And what's your basis for stating that it's possible that you or Eric might have passed it onto the RNC?

A I guess that's me speculating about what the next step might be to -- you know, when you get a 200-page document, so --

Q I want to go back -- I want to go back to the -- to the questions of the campaign reporting, any information about Russian contacts. To your knowledge, did the campaign ever report any information about contacts of any kind with Russia to any law enforcement official?

A Report to law enforcement when? During the campaign?

Q During the campaign.

A Not to my knowledge.

Q Did you receive a defensive, what's called a defensive FBI briefing or any kind of a law enforcement briefing while you were in the campaign?

A I did not, no.

Q Are you aware of whether the campaign received such a briefing?

A I'm not aware.

Q Do you understand what I mean by defensive FBI --

A I do, yes, sir.

Q -- briefing?

What does that mean to you, Ms. Hicks?

A It means to have law enforcement make you aware of potential risks, and how best to protect yourself, if those risks exist already, or if they might present themselves at some time in the future.

Q On July 27, 2016, Mr. Trump publicly stated, "Russia, if you're listening, I hope you're able to find the 30,000 emails that are missing. I think you will probably be rewarded mightily by our press." Do you recall that statement?

A I do, yes, sir.

Q Did you have any discussions with Mr. Trump about that statement prior to the statement being made?

A Not prior to, no.

Q Did you have any discussions with him about the statement after it was made?

A I did, yes.

Q Were you with him at the time he made the statement?

A I was, yes, sir.

Q And when did you discuss it with him?

A When we got back on the plane to go to our next location.

Q And what was that discussion?

A The discussion was me informing him that some in the media had taken the expression quite literally, and that they were concerned he was encouraging foreign governments to, you know,

locate those emails, and that that was obviously something that the media felt was extremely inappropriate and demanded a response from Mr. Trump and the campaign as to what exactly he meant by that.

Q And did you have a view on the appropriateness of this statement?

A You know, it was my understanding from both the way he made the remark, and the discussions afterwards, that this was a little bit tongue-in-cheek. This was not a comment that was intended as an instructive or a directive to a foreign government. It was a joke. And that was the intent, based on my conversation with him, and that was it.

Q And what did he say in that conversation about the statement?

A Just what I just said, that it was intended as a light-hearted comment.

Q The President last week told George Stephanopoulos that he would take information about an opponent from a foreign adversary in the next election. There's nothing wrong with listening. It's not an interference. They have information. I think I'd take it. If I thought there was something wrong, I'd go maybe to the FBI, if I thought there was something wrong. Do you think that was a joke?

A I don't know. I have not discussed that remark with the President. I didn't -- I didn't see the entire interview, so I

saw the clip you're referencing. I don't know if there was additional context. I don't think that was a joke based on what I saw.

Q All right. In your experience now, knowing all that you do, you've reflected on it, would you take -- I'm asking you this based on your experience and the expertise you've developed, would you take foreign oppo information from a foreign government, if that were offered when working on a political campaign?

A You know, knowing how much chaos has been sowed as a result of something like the Steele dossier, no, I would not.

Q And, again, I'm asking you about your expert opinion. Would you advise another person to do that if they were in a position to do so?

A No, I would not.

Q Would you call the FBI if you were offered such information?

A If I felt it was legitimate enough to have our law enforcement dedicate their time to it, sure.

Q If you felt it was genuine or credible, you would call the FBI, right?

A Yes.

Q I'll ask you the same question as to the campaign. According to Mr. Mueller's report there were over 120 contacts between the Trump campaign and individuals associated with the campaign and Russia. That's Russian individuals, that's during

the campaign. I want to ask you a couple questions about specific particular ones, and I am going to direct you -- I'm going to direct you to page 66 of volume one of the Mueller report.

Okay. And I am going to introduce -- this might make it a little more helpful.

[Hicks Exhibit No. 14

Was marked for identification.]

BY MR. EISEN:

Q I'm going to introduce as exhibit 14 a selection of excerpts of the Mueller report. I've handed one to the witness. I'll hand one back to our administration counsel and -- okay. I wanted to try to get this in before the break that we're going to go in 2 minutes.

A That's okay. Let's just keep going.

Q Okay. And -- so this is exhibit 14. I've highlighted at the bottom of page 66 in note 288 a portion of the report. If you would just read that, start with the words "for example," and read those three lines, please, Ms. Hicks.

A "For example, on August 18, 2015, on behalf of the editor in chief of the internet newspaper" -- I'm sorry I can't pronounce the title of that publication. Contrary to popular belief, I do not speak Russian -- "campaign press secretary Hope Hicks was emailed asking for a phone or in-person candidate interview by an individual associated with this publication."

Q And it's the internet newspaper Vzglyad, and the

person's name is Georgi Asatryan. And that refers to an 8/18/15 email from Asatryan to Hicks. Do you recall this episode?

A Only because we discussed it earlier.

Q Do you have anything else you want to add to what you said before about this matter?

A No, sir.

Q Okay. I am going to -- if my -- if my counsel will -- my co-counsel will indulge me, I'm going to try to breeze -- no. We better take our break. I can't do it in 2 minutes. Okay. Well, we will pick up after a 5-minute break.

A Do we have to take the break?

Q Majority and minority counsel are consulting.

Mr. Hiller. Let's go off the record for a minute, please.

Mr. Eisen. Going off the record.

[Discussion off the record.]

[2:10 p.m.]

Mr. Eisen. Back on the record at 2:10.

BY MR. EISEN:

Q Okay. I'll direct you to the next page, page 102, of Volume I of the Mueller report, and you'll see some language is highlighted in footnote 589. You'll recall that we -- would you take a look at that footnote, please, Ms. Hicks? Have you done so?

A Yes, sir.

Q You'll recall there were some questions about Carter Page earlier today. Do you remember that?

A Yes, sir.

Q Do you remember this September 25th email from you to Mr. Conway --

A It's Ms. Conway.

Q -- Ms. Conway and Mr. Bannon?

A Yes, sir.

Q And is this an accurate description of that email?

A Yes, sir.

Q Was it your understanding that Mr. Page was announced as an informal advisor in March?

A He was. Although I don't believe he ever did anything to remotely fulfill the definition of even an informal advisor.

Q What was the point at which he ceased serving as an informal advisor?



A I don't believe he ever served. I've never met Mr. Page. I know that he admits he's never spoken to Mr. Trump. I'm not sure what advice he provided, if any, or in what capacity, but --

Q Let me put it this way. What was the point at which the announcement to the world that this man was an informal advisor to the Trump campaign, if any, was rescinded?

A So he was announced as an informal advisor amongst a group sometime in March of 2016. And, you know, again, contact was limited; there was no service provided by him. But it was made clear in the fall of 2016 that he, in fact, had no role with the campaign.

Q And I'm going to direct your attention to the next page, page 115. And we have highlighted a portion of this material. Will you have a look at it, please? It starts in the body text after 704 and runs through note 706 in the body text.

A Yes, sir, I see it.

Q Okay. And do you recall the meeting that is written about here?

A I don't recall this specific meeting, given this description. But I know we had regular Monday morning meetings with this group, so --

Q Do you recall at any time Paul Manafort warning that Monday morning group that a meeting would not yield vital information and they should be careful? Any note of caution of

that kind that you remember coming up at one of these meetings?

A No, sir.

Q Okay. And do you remember discussing this subject with Special Counsel Mueller or his representatives?

Mr. Purpura. Objection.

Mr. Eisen. What is the basis for the objection?

Mr. Purpura. This occurred during her time as a senior White House advisor. I instruct her not to answer.

Mr. Eisen. Absolute immunity.

BY MR. EISEN:

Q Will you follow the instruction not to answer?

A I will, yes, sir.

Q Would you answer any other questions about the subject matter set forth here on page 115?

Mr. Philbin. Let's be clear what you're asking, the question.

Mr. Eisen. Let me be more specific. Would you answer any other questions about your interviews with Robert Mueller, one of which is reflected here in note 706 of page 115?

Mr. Purpura. We would object.

Mr. Eisen. And the basis for the objection is absolute immunity?

Mr. Purpura. Yes. To the extent you're asking her about the interviews, if you want to ask her about what she knew in 2016 --

Mr. Eisen. Yes. We've exhausted what she knew. Now I'm

moving to the interviews and attempting to close out the Mueller interviews.

BY MR. EISEN:

Q Will you follow the instruction not to answer any questions about your interviews with Special Counsel Robert Mueller or the Special Counsel's Office based on the absolute-immunity instruction of the White House?

A Yes. This is like "Inception." I'm answering questions about interviews and interviews and interviews.

Q Yes.

A I will follow the instructions of the White House.

Q Okay.

Would you answer any questions designed -- would you answer any questions about where those interviews took place, when they took place, who attended those interviews, who you discussed those interviews with, or any other questions intended by us to explore the basis for the absolute-immunity assertion with respect to your interviews with the Special Counsel's Office?

Mr. Purpura. We would object to all of those questions.

Mr. Eisen. Object on the basis of absolute immunity.

And will you follow that instruction?

Ms. Hicks. Yes, sir.

Mr. Eisen. Are there any other privileges that are being asserted at this time as to the Mueller interviews?

Mr. Philbin. Not at this time.

Mr. Purpura. Not at this time.

Ms. Hicks. No, sir.

Mr. Eisen. None by you. Okay. Good.

BY MR. EISEN:

Q Okay. I'm going to pivot over now to the -- we'll do one more from Volume I. Then I'm going to hand you over to my colleagues. Anytime you need a break, just say so.

I'm going to ask you some questions about outreach from the Russian Government, starting with approximately 3:00 a.m. on election night. Do you remember receiving a telephone call at that time?

A Yes, sir.

Q What do you remember about that telephone call?

A I couldn't understand much, but I remember hearing the name "Putin" and an attempt to offer congratulations, a request for a forum in which to do that.

Q And what device did the phone arrive on?

A The phone call arrived on my personal iPhone, which was the phone I'd used throughout the campaign, and its number was well-known, so --

Q Did you have a view at the time the call arrived of what the source of the call was?

A Meaning the number?

Q Meaning who was calling. Did --

A No.

Q -- you have any idea? Could you tell if they were a domestic or foreign individual?

A I believe the number was a 202 number.

Q And tell me everything that you remember the person saying, to the extent you could hear and understand it.

A Sure. I just did. I responded by requesting that this individual send me an email because it was difficult to understand them, and they did that.

Q And when did they send you that email?

A I believe it was shortly after the phone call took place.

Q That same day? Do you remember the date?

A It was the same day, because we're talking about 4 o'clock in the morning. I can't remember if it was an hour later or if it was when I woke up at 6:00, 2 hours later.

Q If you'll take a look at exhibit 14, Volume I, page 145, you'll see that footnote 967 indicates there was an email to you at 5:27 a.m. Does that refresh your recollection as to the time?

A Yes.

Q Okay. And who sent that email?

A I suppose it was the person on the phone, identified as Sergey Kuznetsov.

Q And who is Sergey Kuznetsov?

A An official from the Russian Embassy.

Q Do you know what role he has at the Russian Embassy?

A I don't, no.

Q And other than the engagement that we asked you about, the email in Volume I, page 66, note 288 of exhibit 14, was this the only other time, up to this date, that you had received a direct contact from someone associated with Russia on the campaign?

A I believe I had also received an email in February of 2016 from maybe the same individual or somebody from the Russian Embassy requesting -- trying to coordinate an interview with a Russian news outlet, I believe.

Q Tell us what you remember about that.

A That is what I remember. And I believe I responded saying that we would not be participating and have a nice day.

Q And do you remember what account the email arrived from?

A What account the email arrived from?

Q This -- I'm back on November 9th now.

A What it arrived from?

Q Yes.

A I don't remember, but I have this paper in front of me. It was a Gmail address.

Q Does it refresh your recollection, or are you just reading for me off it?

A I'm just reading off the page. I don't remember.

Q Well, don't do that. We don't like that.

Do you recall what account the gentleman sent it to you from?

A I don't.

Q You don't have an independent recollection.

A No.

Q Okay. Do you recall anything else about the email?

A There was an attachment that was a congratulatory letter from Putin to the President-elect.

Q And what languages was it in?

A Russian and English.

Q And do you recall your reaction when you got this email purporting to be a note from Mr. Putin in Russian and English?

A I wasn't sure if it was legitimate. Wanted to find out how we could validate the sender and the information attached and make sure that the President-elect wasn't getting any false information.

Q And what did you do?

A I sent the email to Jared Kushner to ask for his help in identifying this individual, ensuring that they were affiliated with the Embassy, and then passing it along to the transition officials that would now be maintaining these records and coordinating these communications.

Q And did you learn at the time whether the email was genuine or not?

A My recollection was that Jared reached out to somebody, a contact that he had, that might know individuals at the Russian Embassy and that that was not -- the person that the email was

sent from was not the Russian Ambassador, but didn't have a comment, necessarily, on the validity of the email itself.

Q Did you do anything with the -- after checking with Mr. Kushner, did you do anything further?

A Like I said, I believe I shared the email with the transition officials that were now in charge of the President-elect's communications with foreign leaders. He was obviously taking a lot of congratulatory calls in the days after the election, and that was all beginning to be run through a formal process, so I believe they took over from there.

Q I would like to ask you some -- if I were to ask you the same questions about the special counsel interview on this subject, it would be the same objection, correct?

Mr. Purpura. Yes.

Mr. Eisen. Okay. I think that we're going to jump right to it or -- okay.

Ms. Istel. Unless you'd like to take a break.

Ms. Hicks. No, that's okay.

Ms. Istel. So I'll introduce myself for the record. Sarah Istel with the majority staff.

Good afternoon, Ms. Hicks.

Ms. Hicks. Hi.

Ms. Istel. I'm going to apologize, because we're going to be jumping around a little. We'll try to clarify a couple things that happened. And I want to make sure I get your words right, so



if I repeat something that you testified to earlier, you can just let me know if that's correct.

Ms. Hicks. Sure.

Ms. Istel. Thank you.

So a Congresswoman asked you earlier about whether the President had asked you to make any statements regarding his relationship with Karen McDougal and with Stormy Daniels, and you had said that the President asked you to deny that he had an affair with Karen McDougal. Is that correct?

Mr. Philbin. This is referring to during the campaign?

Ms. Istel. During the campaign.

Ms. Hicks. I believe the statement that I issued said that they did not have a relationship.

BY MS. ISTEEL:

Q Okay. So did you ever ask him if they had -- a relationship, can we agree that that encompasses an affair?

A Yes.

Q Great. And did you ask him if that was true?

A I did not.

Q Did you generally make public statements that he asked you to make without asking him if those statements were true?

A No, but I wasn't in the business of -- I wasn't in the business of questioning him. This was not something that I would have direct knowledge of, so I took his word.

Q But he did tell you that it was not true.

A That's accurate.

Q Okay.

So we're going to go back a little bit. We talked earlier about your relationship with Michael Cohen during the campaign and the President's relationship with Michael Cohen during the campaign.

I take it you're aware that Michael Cohen has now pled guilty to multiple Federal charges on campaign finance violations?

A I'm aware.

Q Have you seen the information where the allegations against Mr. Cohen are laid out?

A Yes.

Q Okay.

I'll let your counsel confer.

Mr. Trout. Yeah. There is information which is a charge, a formal charge --

Ms. Istel. Right, so --

Mr. Trout. -- and then there's information which everybody else uses --

Mr. Eisen. She means the information --

Ms. Istel. I do. And, actually, we have that as an exhibit, so we'll just introduce it now so that you can just see.

Mr. Trout. I'm not sure that --

Ms. Istel. I'm just going to read one sentence from it really quickly to make sure we're all on the same page as to what

that refers to.

BY MS. ISTEEL:

Q "But the complaint alleges that Individual One directed Mr. Cohen to make hush-money payments to women who had affairs with Individual One during Individual One's Presidential campaign."

Are you familiar with that allegation?

A Yes, I am.

Q Do you have any knowledge of whether the President knew that Mr. Cohen had made payments to Stormy Daniels during the campaign?

A I don't have any direct knowledge.

Q Did you ever witness Mr. Cohen and the President discuss payments to any women during the campaign?

A I did not.

Q Were you ever present when Mr. Cohen and the President had meetings about the President's relationship with other women during the campaign?

A Actually, there is one discussion that I was part of, in terms of -- you know, that involved Mr. Trump, Michael, myself, and it was regarding another woman. Her name was Jill Harth.

She had made allegations about something she claimed had happened, I believe, 20 years prior, but, you know, at the same time, had been sending requests to Mr. Trump's office for jobs, other, I believe, gifts, stating her support for his candidacy,

and generally just praising him for being a friend and a good person over the years, and then shortly thereafter, you know, changed her tune a bit publicly.

So that was the one conversation I was part of with that group of people.

Q When you say "changed her tune," can you describe what that means for the record?

A She began publicly to disparage Mr. Trump and, again, make claims about some things she said happened 20 years prior.

Q Do you have any knowledge of whether she made any demands on Mr. Trump?

A Like I said, she was making requests for various jobs that were not fulfilled, but I don't know if there were any other sort of more extreme requests or attempts to elicit help from him.

Q So, just to clarify, did she ever say, if you don't do X for me, then I will continue to disparage you publicly, to your knowledge?

A Not to my knowledge.

Q What did Mr. Trump respond, or -- at the time, respond?

A The nature of our conversations was just to ensure that, you know, any media outlets that were interviewing this person or attempting to write her story, that they were also aware of this additional context.

Most of the communications, you know, describing her support for Mr. Trump and his candidacy, saying how she had attended

rallies, requesting jobs, things like that, she had put in emails to his office. So wanting to make sure that the reporters had access to that information as well and, if they were going to proceed with the story, that they would present a full picture of all of the information.

Q Thank you.

Now, earlier you mentioned that, before receiving a story, David Pecker emailed you to give you a heads-up. Is that right?

A This was specific to the Wall Street Journal story, I guess November 3rd or November 4th. I wasn't aware of the circumstances described to me by the reporter, as what -- as what they were planning to write. It obviously involved American Media. I reached out to David Pecker to see if he was engaging with the reporter and if he knew what they were talking about, since I didn't, and he wasn't available.

He called me back and let me know that he had been made aware of the story and that his communications team was going to respond and shared the statement with me that they had provided to The Wall Street Journal or were in the process of.

Q Did he regularly tell you in advance of stories published about Mr. Trump?

A This was the only instance.

Q Did you have any other contact with him during the campaign?

A I had contact in the sense that he was an acquaintance

of Mr. Trump. So sometimes -- you know, Mr. Trump doesn't email and was often extremely busy, so sometimes when we were on the road I would send a message to him or give his office a call to relay something for Mr. Trump -- dinner plans, a positive article that Mr. Trump wanted David to read, something interesting, maybe a picture from our travels on the campaign.

Q And I'll come back to that in a second, but you mentioned that Mr. Trump didn't email during the campaign. Did he ever tell you why he didn't send emails during the campaign?

A He just doesn't -- it's not specific to the campaign period. He just doesn't use email.

Q Have you ever seen him write an email?

A No.

Q Did you ever ask him why he doesn't write emails?

A I just know he prefers to speak on the phone. He prefers the interaction.

Q Does he text?

A Not that I'm aware of.

Q So if you want to reach him, the only way to do so is to call him?

A That's my understanding, unless something's changed.

Q If he doesn't pick up and it's urgent, how would you get in touch with him during the campaign?

A He usually picks up. But, you know, there's usually somebody else with him that you can try to reach out to as

well -- security, an advance person, right? There's always people around.

Q And we'll come back to that in a second, but I want to just finish on this issue while we can.

You mentioned that that was the only time that David Pecker had reached out to you or discussed a negative story about Trump in advance of the story. Did you have any discussions with anyone else at AMI about a negative story and Trump prior to the release during the campaign?

Ms. Solomon. I'm sorry. Can we just clarify? You mentioned about David Pecker reaching out. I'm not sure that that correctly describes Ms. Hicks' testimony.

Ms. Istel. Sure. I think she said -- and you can correct the record.

Ms. Hicks. I reached out --

Ms. Istel. Yeah.

Ms. Hicks. -- to Mr. Pecker based on the inquiry I received from The Wall Street Journal, which described American Media's involvement in the situation. I wasn't aware of any of the circumstances surrounding the situation they described. So, to get more information -- Mr. Trump was on stage giving a speech at the time, so I reached out to David to see if he knew about this.

Like I said, he acknowledged that his communications team had also been made aware by The Wall Street Journal of the story coming out and that they had responded or were in the process of

responding with the statement that he read to me.

BY MS. ISTEEL:

Q So I'll just clarify, then, for the record --

A I didn't offer any changes or suggestions. It was purely an information-gathering phone call.

Q That's helpful. Thank you.

And can we ask the same question about Dylan Howard or anyone else at AMI? Did you speak with anyone at AMI about a negative story about Trump prior to its release?

A Not that I'm aware of.

Q Did you have any contact with Keith Davidson during the campaign?

A Not that I'm aware of.

Q Okay.

So I think, if we can go back and talk through a little bit more about the campaign, I just want to clarify for the record: Mr. Eisen asked you about who kept your schedule during the campaign. Do you know who kept Mr. Trump's schedule -- or if he wrote down notes during the campaign. So I'd like to ask similar questions about Mr. Trump's time during the campaign. Do you know who kept his schedule?

A Sure. So there were multiple people. Rhona Graff, his longtime executive assistant and senior vice president at The Trump Organization, kept a record of his meetings. And, obviously, the campaign had a scheduler that primarily handled



travel.

Q So if someone wanted to reach Mr. Trump, who would they contact?

A Most likely Rhona. Obviously, things evolved a little bit as we worked on the road more, and sometimes they would contact me. Sometimes they would contact Mr. Trump directly. Keith Schiller.

Q And did Rhona also keep Mr. Trump's phone messages during the campaign?

A She did, yeah.

Q And what about the rest of the senior staff's schedule? If you wanted to reach Manafort on a given day, during the campaign, how would you do that?

A I have no idea.

Q So you were with Mr. Trump during most days on the campaign. Is that correct?

A Yes.

Q And if he said, I'd like to get in touch with Manafort or my Deputy Chairman Gates, how would you do that?

A I would call Paul's, I guess, cell phone number.

Mr. Trout. Paul Manafort?

Ms. Hicks. Yes.

BY MS. ISTEEL:

Q Okay. So is it fair to say that you -- at a given day during the campaign, would you know where the senior staff members

were, of the campaign?

A Most senior staff traveled with the candidate. You know, we were a very small team. And other members of the campaign, either -- if you worked in the States, pretty obvious where we might find you. And someone like Paul was a little bit more difficult perhaps. He split his time between New York and Washington and was also running the convention, so he spent quite a bit of time in Cleveland.

Q Did you have weekly senior staff meetings during the campaign?

A Like I said earlier, we usually met Monday mornings. This started around the time that Paul took on more responsibility.

Q Was Mr. Trump at those meetings?

A No.

Q Did anyone brief him about those meetings after they occurred?

A Sometimes he would be briefed on changes to his schedule, like if there was a travel day added or a rally, but --

Q What about the substance of those meetings? Did you ever talk about messaging or any big issues that occurred?

A Again, it was mostly travel-based, so, like, you know, we're going to be traveling on Thursday, we're going to North Carolina, this is going to be a great opportunity for you to give a speech on X. But that was the primary reason for

debriefing him on those meetings.

Q Do you recall a senior staff meeting on the week of June 9th, 2016?

A I don't.

Q So, if we can --

A I mean, I'm sure it -- I'm not saying it didn't happen. I just don't remember anything remarkable about it.

Q Yeah, no, that makes total sense.

So if we can, let's go to Volume I, page 115. I think that's the passage where Mr. Eisen read you previously. And so it just discusses the meeting that day. And I just wanted to clarify, if we could just -- it says: In the days before June 9, 2016, Trump, Jr., announced at a regular meeting of senior staff he had a lead on negative information about the Clinton Foundation. Gates believed that Trump, Jr., said the information was coming from a group in Kyrgyzstan and that he was introduced to the group by a friend. Gates recalled that the same meeting was attended by Trump, Jr.; Eric Trump; Paul Manafort; Hope Hicks; and, joining late, Ivanka Trump and Jared Kushner. According to Gates, Manafort warned the group that the meeting likely would not yield vital information and they should be careful.

Mr. Philbin. Is this the same --

Ms. Istel. Yeah, it's the same one we just went over before.

Mr. Philbin. Hicks denied any knowledge of the June 9th meeting before 2019.

Ms. Istel. Yes.

So just a quick followup, which is just, did you tell the President about that meeting, Mr. Trump, at the time?

Ms. Hicks. I don't remember the meeting taking place.

Ms. Istel. Okay.

So I think we're going to pivot to the transition.

Sorry. I'm just going to ask my colleagues if they have other questions before we continue.

I'm going to yield back to Mr. Eisen.

BY MR. EISEN:

Q Okay. We were on the Mueller report, Volume II, back in exhibit No. 14. And I'm going to direct you now to page 21 and the page after that, which is page 23, for some questions about the transition, Ms. Hicks.

Do you recall the President -- and I don't want you to divulge any information. I'm just asking you a yes-or-no question. Do you recall that the intelligence community publicly released an assessment with respect to the Russian attack on the elections during the transition? Do you remember a public IC assessment being released on that subject?

A Yes, sir.

Q And over on page 23, do you remember discussing that public IC assessment with President Trump?

Mr. Trout. President-elect Trump or President Trump?

Mr. Eisen. President-elect Trump.

Ms. Hicks. Yes.

Mr. Eisen. Tell me about that conversation.

Mr. Philbin. Objection. If you're going to be asking broadly about what the President-elect thought or had to say about an intelligence community assessment, even if it later became public, it was communication from the intelligence community to the President-elect prior to taking office.

So, if you want to narrow your question, we can see if we have objections.

Mr. Eisen. Did the President tell you that he viewed the intelligence community assessment as his Achilles' heel because, even if Russia had no impact on the election, people would think Russia helped him win, taking away from what he accomplished?

Ms. Hicks. He did not say that to me.

Mr. Eisen. Did he say that in some form of words, not those exact words, but some form of words?

Mr. Philbin. Mr. Trout, you might want to have the witness read that paragraph. He's asking questions about that paragraph.

Mr. Eisen. Perfectly fine for the witness to read the paragraph.

The question is, do you recall that the President-elect viewed the intelligence community assessment as his Achilles' heel?

Ms. Hicks. I think the following statement is most accurate, that the President thought the Russia story was developed to

undermine the legitimacy of his election.

Mr. Eisen. And, at this time, did you agree with that?

Ms. Hicks. I think --

Mr. Trout. Let's confer.

[Discussion off the record.]

Ms. Hicks. Sorry about that.

So I think that to say that it was developed as a means to undermine the legitimacy of his election is not accurate. But to say that the assessment of the intelligence community, which I already testified I agree with -- I feel that it has been weaponized by certain people with an agenda for the purpose of trying to undermine his legitimacy.

BY MR. EISEN:

Q At this time during the transition, did the President accept the IC's assessment?

A I think that the President has been consistent in his private and public statements regarding his thoughts on the assessment of the intelligence community on this topic.

Q So his private -- he expressed the same doubts privately that he has publicly?

A Yes. And I think, primarily, at that time, his hesitation was, as he has stated, that this assessment was being made by the previous administration officials. And once his officials were in place, he had greater confidence in their assessments.

Q Have you discussed this matter with the President since leaving the White House?

A I have not, no.

Q Did you discuss this matter with the President -- the intelligence community assessment, did you discuss it with the President while you were a White House official?

Mr. Purpura. Objection.

Mr. Eisen. Will you answer any questions at all on the subject matter of the IC's views about the Russian attack on the 2016 election based on your time in the White House?

Mr. Purpura. We would object.

BY MR. EISEN:

Q Okay. Who was Michael Flynn?

A Michael Flynn was somebody that supported Mr. Trump. He was at one point in time considered a possible Vice Presidential candidate. And he became somebody who frequently traveled with the candidate and introduced him at rallies.

Q And are you aware that President Obama made comments about Mr. Flynn to the --

A Yes.

Q -- the President-elect?

A Yes.

Q And how did the President-elect receive those comments?

Mr. Purpura. You can answer.

Ms. Hicks. I think he was a bit bewildered that, you know,

of all the things that the two of them could have been discussing, that that was something that came up.

Mr. Eisen. And did you feel that President Obama's comments sat with the President-elect more than you expected?

Ms. Hicks. I did, yes.

Mr. Eisen. Can you -- go ahead. Sorry. I cut you off.

Ms. Hicks. That's okay. I feel like it maybe tainted his view of General Flynn just a little bit.

Mr. Eisen. Did there come a time when the President formed the opinion -- during the transition; I'm asking now about the transition -- that Flynn had bad judgment?

Mr. Philbin. Could you give us a moment there?

[Discussion off the record.]

Mr. Eisen. Can you read the question back, please?

Okay. I've asked the court reporter to read the question back.

[The reporter read back the record as requested.]

Ms. Hicks. Yes.

Mr. Eisen. Tell me about that.

Ms. Hicks. I don't think this was an overall characterization. I think that this was something where he felt like there were a few things that maybe caused him to think that he was capable of being a person who exercised bad judgment.

Mr. Eisen. What were those things?

Mr. Philbin. I'm sorry. Can I again suggest that, since the



question seemed to be based on footnote 155, page 32, Ms. Hicks have a chance to review that footnote?

Ms. Hicks. Yeah. I mean, primarily the comment by President Obama and the incident with General Flynn's son concerning a fake news story and some of the tweets that were posted surrounding that.

BY MR. EISEN:

Q Posted by?

A I believe they were posted by his son, and then it led to reporters also looking back at tweets that General Flynn had posted.

Q Do you recall David Ignatius writing a column about a Michael Flynn phone conversation with the Russian Ambassador during the transition?

A Yes.

Q And what do you remember about that?

A I don't remember much about the substance of the column, to be honest, but I remember several email exchanges between the National Security Advisor, General Flynn at the time, and some of his national security staffers, a desire to perhaps have David Ignatius clarify some things in that column, and a failure to do so.

Q Were you involved in the clarification efforts?

A I was on the email thread, so I was following the discussion that ensued, but I was not involved in any kind of

message development or outreach to Mr. Ignatius.

Q Did you have any advance knowledge of a phone call between Mr. Flynn and the Russian Ambassador that was the subject of this Ignatius reporting?

A I believe I was aware of it the day that it took place. I don't know if it was before or after. But I recall being at Mar-a-Lago, and Flynn, I think -- sorry. Off the record.

[Discussion off the record.]

Ms. Hicks. I think it was afterwards. Perhaps even several days afterwards.

Mr. Eisen. When did you first learn that there was an issue about -- if you learned -- actually, let me rephrase that question. Did Mr. Flynn talk to you after the column was published about the column?

Mr. Philbin. And we're still asking --

Mr. Eisen. We're asking transition. We're about to come to the post-transition period.

Ms. Hicks. I don't recall any direct conversations with him, only the email thread that I described.

Mr. Eisen. During the transition, did you develop any additional information about the truth or falsity of anything in the Ignatius column?

Ms. Hicks. Not to my recollection.

Mr. Eisen. What about after the transition?

Mr. Philbin. Objection.

Mr. Purpura. Objection.

BY MR. EISEN:

Q Okay. When did you first become aware of the "Access Hollywood" tape?

A About an hour before it was made public.

Q And what was your reaction to it?

A Honestly, my reaction was, it was a Friday afternoon, and I was hoping to get home to see my family for the first time in a few months, and that wasn't happening.

Q Did you have any other reactions?

A Look, I obviously knew that it was going to be a challenge from a communications standpoint.

Q Did you discuss it with Mr. Trump?

A I did, yes.

Q Tell me about those discussions, please.

A I made him aware of the email I received from The Washington Post which described the tape. And I don't know if the initial email did this, but certainly one of the subsequent emails and exchange provided a transcript of the tape. So, described those different components to Mr. Trump and tried to evaluate the situation.

Q And how did he react to that?

A You know, he wanted to be certain, before we engaged, that it was legitimate. And I think we all felt it was important that we request to see the actual tape or listen to the audio

before responding.

Q Was he upset?

A Yes. I think everybody was in, like, a little bit of shock.

Q And did he ask you how -- did he seek your advice on how to respond?

A Yes. There were quite a few of us, so it was very much a group discussion, given that this unfolded at a debate-prep session.

Q And do you remember who else you discussed the tape with?

A Who else was present there?

Q Yeah, at that time.

A Sure. Reince Priebus, Chris Christie, Jeff Sessions, Stephen Miller, Jason Miller, Steve Bannon, David Bossie, Kellyanne Conway. Later, Jared Kushner. I think that's it.

Q Do you recall reaching out to Michael Cohen about the tape?

A My recollection of reaching out to Michael took place the following day. And it wasn't about the tape; it was about -- this is going to get confusing, but the day after the tape, there were rumors going around -- I'm not sure exactly where -- I heard it from our campaign spokesperson, Katrina Pierson, who was sort of like a -- she had a lot of contacts, grassroots. And she had called to tell me that -- or maybe sent

me a message about rumors of a tape involving Mr. Trump in Moscow with, you know -- can I say this?

[Discussion off the record.]

Ms. Hicks. -- with Russian hookers, participating in some lewd activities.

And so, obviously, I didn't -- I felt this was exactly how it had been described to me, which was a rumor. Nonetheless, I wanted to make sure that I stayed on top of it before it developed any further, to try to contain it from spiraling out of control.

And the person that made me aware of the rumor said that TMZ might be the person that has access to this tape. I knew Michael Cohen had a good relationship with Harvey Levin, who works at TMZ. So I reached out to Michael to ask if he had heard of anything like this; if Harvey contacted him, if he could be in touch with me.

BY MR. EISEN:

Q And do you recall anything happening in connection with WikiLeaks at this time?

A Yes.

Q And what happened in that connection, Ms. Hicks?

A I believe the same day that the tape was released, WikiLeaks also released emails from John Podesta's account.

Q Do you have any information about how those came to be released at that time?

A No.

Q Okay. And any other reason you reached Mr. Cohen besides the Harvey Levin connection?

A No. I know what Michael said in his testimony about reaching out to him to help, quote, spin reporters. Number one, I wouldn't reach out to Michael for help spinning reporters at that point in time. And, number two, you know, there was really no spinning that tape.

Q Did there come a point at which you learned during the transition about the press reporting on hush-money payments?

A During the transition?

Q I'm asking during the campaign and transition.

A No.

Q Okay.

Do you remember a Wall Street Journal article from November 4th, 2016?

A Yes.

Q What do you remember about that?

A Like we already discussed, I remember receiving a request from The Wall Street Journal asking if candidate Trump had a relationship with a woman named Karen McDougal. I forget the exact phrasing of the email, but obviously it led me to American Media, where David Pecker said that they were responding to the story and that their response was going to indicate that they had a relationship with Ms. McDougal, who had done work for them in the past. They had a contract with her to provide content. I

believe it was, you know, fitness and nutrition-related content. And that was the extent of their response.

Q Did Mr. Cohen, to your knowledge, have a relationship with AMI or any --

A He did, yes.

Q -- of its personnel?

A Yes.

Q And what was the basis -- or what was that relationship?

A I don't know. I never witnessed the relationship firsthand. I don't know if it was professional or personal or both. I don't know.

Q How did you become aware of it?

A I don't know exactly.

Q Okay. I'm going to come back over to the Mueller report. That's exhibit No. 14. And I'm going to ask a series of questions. We're just going to go through.

I'm now going to take you to -- and I'm going to go in order through the report, for the sake of moving as briskly as we can. I'm going to take you to page number 44 of Volume II.

Do you recall -- this is note number 268. Do you know who Jim Comey is?

A Yes.

Q Do you recall the President telling you that he had never asked Jim Comey to stay behind in his office?

Mr. Purpura. Objection.

Mr. Eisen. Okay.

The White House objects on the basis of absolute immunity.

Will you follow that instruction?

Ms. Hicks. I will.

Mr. Eisen. Refuse to answer?

Ms. Hicks. I will.

Mr. Eisen. Will you answer any questions at all about the subject matter set forth in note 268 of page 44?

Mr. Purpura. We would object to that subject matter.

Mr. Eisen. Would you answer any questions designed to establish the predicate for the absolute immunity, such as who was present, where the conversation happened, the purpose of the conversation, or any other predicate questions?

Mr. Purpura. We would object to all those questions.

Mr. Eisen. Are you asserting any other privilege as to my question?

Mr. Philbin. Not at this time from the White House.



[3:06 p.m.]

Mr. Eisen. On to page 47. Now I'm going to ask a series of questions about Mr. Flynn within the White House.

Are you willing to answer any questions about the President becoming unhappy with Mr. Flynn before he was forced to resign? Now I'm asking about the White House period.

Mr. Purpura. And we object.

Mr. Eisen. And the answers to questions about establishing the predicate and other privileges would be the same. We'll just stipulate that going forward.

Mr. Philbin. Let me clarify. I mean, the absolute immunity applies to a senior adviser to the President, given the senior adviser role in proximity to the President overall. So the premise of the question seems to be that we would have to pick apart each incident as to whether the immunity applies to that incident. We disagree with that premise. It applies to the senior adviser in the role, in connection with service and discharge of their duties as senior adviser to the President.

Mr. Eisen. Understood. That's the White House's view. We take a different view in the committee.

My question is, other than the assertion of absolute immunity, are you willing to ask -- to answer any questions about the subject matter of Mr. Flynn, the President's views towards Mr. Flynn, starting with the January 20th, 2017?

Mr. Purpura. Object -- we would object.

Mr. Eisen. Okay. Do you recall that after Attorney General Sessions recused himself, the President became angry and scolded the Attorney General in your presence?

Mr. Purpura. Objection.

Mr. Eisen. Okay. Same basis?

Mr. Purpura. The basis is immunity, yes.

Mr. Eisen. Asserting any privileges in that regard beyond absolute immunity at this time?

Mr. Purpura. Not at this time.

Mr. Eisen. And will you answer the question?

Ms. Hicks. I will not, no.

Mr. Eisen. Okay. On to page 59, which we alluded to earlier. Have it here in exhibit 14 as well.

Do you recall telling the President after an interview that his comment about Mr. Comey should be removed from the broadcast of that interview, but the President wanted to keep it in, which you thought was unusual? Will you answer any questions about that?

Mr. Purpura. Objection.

Mr. Eisen. Do you recall the President telling his communication team that he was unhappy with the press coverage of Comey's termination and ordering them to go out and defend him?

Mr. Purpura. Objection.

Mr. Eisen. Will you answer any questions on that subject matter or on the subject matter set forth in the preceding pages

of the Mueller report, Volume II?

Mr. Purpura. Well, I guess, sort of to clarify, you -- couple things run together. If the subject matter is the President's reaction and direction to the press team as to the firing of Director Comey, we would provide -- we would have the same objection.

Mr. Eisen. Let's specify what the subject matters are: the Sessions recusal; the President's reaction to the Sessions recusal; the subject of Jim Comey post-January 20; the President's firing of Jim Comey; press coverage of that; all of those subject matters that are covered in the Mueller report, Volume II.

Would you object to Ms. Hicks answering questions on those subject matters based on absolute immunity?

Mr. Purpura. Yes.

Mr. Eisen. Okay. Also in connection with the firing of Mr. Comey, there are a series of statements, Ms. Hicks, on page 71 of Volume II.

If it's easier, exhibit 14 has the relevant portions highlighted.

Ms. Hicks. I'm just going to move this, because I know I'm going to spill it. Sorry. Take that off the record.

Mr. Eisen. Okay. Would you answer any questions about the President's reactions to reports on his meeting with Mr. Lavrov regarding Mr. Comey?

Mr. Purpura. Objection.

Mr. Eisen. Any questions at all regarding the Comey firing?

Mr. Purpura. Objection.

Mr. Eisen. Okay.

Now we'll pivot to the subject of the special counsel's appointment and the President's reaction to that.

Would you answer any questions on that subject?

Mr. Purpura. Objection.

Mr. Eisen. You told the special counsel that you saw the President shortly after Sessions departed and described the President as being extremely upset by the special counsel's appointment and that you had only seen the President like that one other time, when the "Access Hollywood" tape came out during the campaign.

Will you answer any questions about that?

Mr. Purpura. We would object.

Mr. Eisen. Any questions at all about your special counsel interviews?

Mr. Purpura. We would object.

Mr. Eisen. Do you remember the President on his flight from Saudi Arabia to Tel Aviv removing Sessions' resignation letter from his pocket and showing it to a group of senior advisers and asking them what he should do about it?

Mr. Purpura. Objection.

Mr. Eisen. Will you answer any questions about that subject matter?

Mr. Purpura. We would object to those questions.

Mr. Eisen. The chairman asked you a series of questions this morning about some notes that Mr. Lewandowski told the special counsel he asked you to type when he went into the Oval Office in a discussion, again, relating to Mr. Sessions and that he retrieved the notes from you part way through his meeting. This is on page 93 of the special counsel's report, note 625.

Would you answer any questions about that subject matter?

Mr. Purpura. We would object.

Mr. Eisen. On page 94, exhibit 14 has some portions highlighted relating to your conversations with Mr. Lewandowski about the New York Times interview and about firing Sessions. Will you answer any questions about that?

Mr. Purpura. There will be an objection.

Mr. Eisen. To all related subject matter?

Mr. Purpura. Yes.

Mr. Eisen. Do you remember ever discussing a recess appointment of a replacement for Mr. Sessions with the President?

Mr. Purpura. Objection.

Mr. Eisen. And that is Volume II, page 94, note 636.

Okay. Will you answer any questions relating to your time at the White House or your conversations with the office of the special counsel about the campaign arranging a meeting between Donald Trump, Jr., Paul Manafort, Jared Kushner, and a Russian attorney?

This is the -- sometimes referred to as the Trump Tower meeting. But now I'm asking her knowledge during the White House period.

Mr. Purpura. Objection.

Mr. Eisen. Have you had any conversations about that subject, the Trump Tower meeting, post your White House service with anyone at all, other than your lawyers?

Ms. Hicks. Not to my recollection. Not to my recollection.

Mr. Eisen. Okay. Will you answer any questions about the subject matter of the Trump Tower meeting on June 9th, 2016, with respect to information you learned or actions you took while you were a White House employee?

Mr. Purpura. Objection.

Mr. Eisen. On page 100 through 103 of the Mueller report there is a discussion of direction by the President to his communications staff not to publicly disclose information about the June 9th meeting and the response to press -- the President directing Donald Trump, Jr.'s response to press inquiries about the June 9th meeting and related matters.

Will you answer any questions about the special counsel's statements on page 100 to page 103?

Mr. Purpura. There would be an objection.

Mr. Eisen. Will you answer any questions relating to that subject matter at all?

Mr. Purpura. There will also be an objection.

Mr. Eisen. Okay. Moving to -- do you remember telling Mr. Corallo that certain materials will never get out?

Mr. Purpura. Objection.

Mr. Eisen. Okay. We're going to pause. Ms. Dean has joined us from the votes as other members are coming and have questions.

Ms. Dean. Thank you, Counsel.

Good afternoon.

Ms. Hicks. Hi.

Ms. Dean. I know it's been a long day for you, and I apologize. If I ask something that will wind up being a slight repeat of what you have been asked, we also were in hearings on reparations, important hearings on reparations. So I apologize for my running between these two important meetings.

Ms. Hicks. I totally understand. And this is one of many repetitions over the last several years. So go ahead.

Ms. Dean. And you know something about a crazy schedule like that?

Ms. Hicks. Yes, ma'am.

Ms. Dean. I wanted to ask you about the time of transition and immediately after the election. And what was your role at that time?

Ms. Hicks. My title was press secretary, and my role was very similar to my role on the campaign. I served as sort of a liaison between the different leadership positions and the different components that go into preparing the President-elect to

take office, and maintaining a public presence at that time, and starting to execute his agenda, as well as communicating with the media.

Ms. Dean. Terrific. And during the transition, who was principally responsible for messaging in response to the allegations of Russian interference?

Ms. Hicks. There were several people involved. Mr. Trump was involved directly and Jason Miller --

Ms. Dean. Jason -- go ahead.

Ms. Hicks. Sorry. I was just waiting for the door to close.

Ms. Dean. Oh, thank you.

Ms. Hicks. Stephen Miller, myself, Steve Bannon, Kellyanne Conway, Sean Spicer, to name a few.

Ms. Dean. And so in your role on that front, during the transition, did you discuss with the President-elect how to message about Russia's interference with our election?

Ms. Hicks. Yes.

Ms. Dean. And could you tell us about that conversation? This was during transition.

Ms. Hicks. Yes.

Ms. Dean. Could you tell us about that?

Ms. Hicks. I believe the response that he put out, the statement, was something to the effect of, you know, that these are the same intelligence agencies that determined Saddam Hussein had weapons of mass destruction, perhaps [inaudible].



The Reporter. I'm sorry. The audio has gone out.

Ms. Hicks. -- an approach would be the best.

[Discussion off the record.]

Ms. Hicks. I guess that's it.

Ms. Dean. So in response to that, the President -- rather than talking about Russian interference with the 2016 election, he made the comparison to a falsehood of the past? That's what he said?

Ms. Hicks. I don't believe that's a falsehood. But yes, that's what he said.

Ms. Dean. Okay. Was he concerned? Did he express concern to you about the Russians' interference with our 2016 elections?

Ms. Hicks. I think he was concerned, but I think he was simultaneously concerned that folks with a political agenda, were going to weaponize that assessment to try to undermine the legitimacy of this election.

Ms. Dean. And two days after the President was elected, what was your statement to the press about the Trump campaign and any kind of meetings or contacts with Russia during the campaign?

Ms. Hicks. Sure. So -- yeah, I was responding to a statement made by a Russian official. I believe his statement is not verbatim, but it was something to the effect of we were in constant communication or constant contact with members of Trump's inner circle throughout the campaign.

You know, to my knowledge, that was not true. That had not

been my experience. I think I missed a total of 4 days throughout the entire primary and general election season, if you will, cycle. It was an overbroad answer that obviously didn't account for other communications with foreign officials from places like Mexico, where we took a very -- campaign-affiliated trip; Scotland; meetings with Prime Minister Netanyahu during U.N. General Assembly week.

So it was an overbroad answer, but, you know, even to this day, knowing some of the contact that members of Mr. Trump's inner circle had with Russian officials, I don't believe that that characterization made by that diplomat or whoever that was speaking was accurate. It seems like one of those situations -- maybe -- I'm sure everyone has had one of these before, where those interactions meant a lot more to them than it did to us. These were handshakes at events and things of that nature.

Mr. Philbin. And just to clarify the record, Ms. Hicks, when you referred to members of Mr. Trump's inner circle, you were making air quotes with your hands, were you not?

Ms. Hicks. Yes.

Mr. Philbin. Could you explain what that means, because --

Ms. Hicks. I guess everyone has a varying definition of who would be considered part of the inner circle, but I would consider that to be people that regularly traveled with the candidate, had decisionmaking roles, things like that.

Mr. Philbin. And it was your point that those people were not part of the inner circle? Is that what the air quotes were?

Ms. Hicks. My point is that I'm not aware of anybody that regularly interacted with Mr. Trump that was a decisionmaker that advised him on a frequent basis that had, quote, regular contacts with any Russian officials. I wasn't aware of any contacts with Russian officials until some of this has been made publicly available, so --

Ms. Dean. And that's my next area of questions.

You, as you just described, you were an important part of the campaign for all but 4 days. And in your experience, what, if any, contacts did anybody on the campaign have with Russians, Russian officials, nonofficials? What, if any?

Ms. Hicks. Are you asking about my knowledge of it during the campaign or now after the fact?

Ms. Dean. Let's start with during the campaign.

Ms. Hicks. During the campaign, I wasn't aware of any -- of any contact, but I also wouldn't describe something -- like an email I received with an interview with a Russian outlet to be contact with Russian officials. It's a totally insignificant, random --

Ms. Dean. My question was broader than that.

Any Russians or Russian officials? So there were emails?

Ms. Hicks. Again, I understand what you're asking. I just -- I don't feel as though the interactions that I learned of

later, as it pertains to key members of the campaign, were substantive.

Ms. Dean. I'm really unclear what that means. So there were meetings, there were interactions, there was some engagement, whether it was by email or phone or in person. But you decided they're not substantive, therefore, they didn't happen?

Mr. Trout. Objection, I think that mischaracterizes --

Ms. Hicks. That is not what I said at all.

If you want to repeat your question so we can get on the same page, that might be best.

Ms. Dean. What, if any, communications, contact, was there between the Trump campaign and Russians or Russian officials?

Ms. Hicks. Like I said, during the campaign, I wasn't aware of any contacts. That is why I answered the question the way I did. Later, having learned about some of the contacts that have been described in media reports, like Jeff Sessions meeting Ambassador Kislyak at a foreign policy speech event, I think that I would still characterize the answer I gave in response to a question about, quote, constant contact with members of Trump's inner circle.

Ms. Dean. I didn't ask you about constant contacts. I asked you what, if any, contact.

Ms. Hicks. I'm answering the question as best as I can. I wasn't aware of any during the campaign. And the contact I'm aware of now is irrelevant to me.

Ms. Dean. But to be honest, you immediately cited at least one example of email contact that you had from Russia -- from Russians.

So what other contacts were there like that that you're dismissing from my question, but I'm just interested in --

Ms. Hicks. I'm not dismissing it. I just -- it's irrelevant. It was an email that I received from --

Ms. Dean. Maybe we get to decide what is relevant in our oversight.

So the question is factual; it's not -- it's not your opinion based. It is what, if any, contacts.

Mr. Trout. Objection. Ms. Hicks has answered the question and --

Ms. Hicks. And everything that goes on in this committee is factual and not opinion-based?

Ms. Dean. We're trying to get facts. That's what I know my ambition is.

Ms. Hicks. That is not the purpose of today's hearing or anything that has gone on concerning this committee's work and -- and this investigation --

Ms. Dean. Again, this is --

Ms. Hicks. -- from my perspective.

Ms. Dean. I know that.

Ms. Hicks. So if you all wanted to get facts, you know, I would say that those are available in this report, of which most

of this session has consisted of repeating, which I'm happy to do. We can do a reading of that. But if you want facts, I think I'm trying to answer your question. I'm telling you I wasn't aware in the campaign of any contacts with Russian officials after the fact.

Ms. Dean. I didn't ask you just about just Russian officials. Ms. Hicks, I'm really asking you, just stick with the parameters of my question, not your opinion as to what we're doing here.

Ms. Hicks. Okay. I -- let me try this again.

During the campaign, I was not aware of any contacts with Russian individuals or Russian officials.

Ms. Dean. Your one testimony to the contrary. You vetted emails from possible Russia outlets.

Ms. Hicks. I learned of that after the fact. I wasn't aware when I was communicating with that person or receiving their email request that this was an individual from Russia.

Ms. Dean. And you were the press secretary?

Ms. Hicks. Yes, ma'am.

Ms. Dean. Usually the press secretary would find out what outlet this is contacting us. Am I correct?

Ms. Hicks. I was the only press staffer for the Donald Trump campaign. So I received hundreds of press requests in a day. And we weren't participating in interviews, so it was not relevant to me who the outlet was.

Ms. Dean. I have empathy for how you must have been swamped. That was a very busy campaign.

Ms. Hicks. I'm not asking for empathy. I'm just asking for you to understand the context.

Ms. Dean. So to your question, you said I was asking you about then. Now, what do you know to be the truth as to the number of contacts -- what, if any, contacts between the campaign that you were press secretary for and Russia or Russia -- Russian officials, that you know now?

Mr. Philbin. If you're asking about material that she learned in her role as a senior adviser to the President while at the White House, we'll object.

Ms. Dean. I understand that objection.

How about outside of that? Because you are now a private citizen. You're outside of that role.

What do you now understand to have been the extent of contacts between the campaign that you were press secretary for and Russia?

Ms. Hicks. I don't -- I don't have a -- I couldn't repeat back to you all of the contacts that are described in the Mueller report, if that's what you're asking.

Ms. Dean. So you had a chance to read Volume I?

Ms. Hicks. I have not read the entirety of the report.

Ms. Dean. What extent do you now know of the context between the campaign and Russia? Could you summarize maybe or guesstimate

the number? Are we talking dozens or are we talking 50? Are we talking 100? Are we talking more?

Ms. Hicks. I think someone mentioned upwards of 100 earlier today. I don't know if that's accurate or if that's an accurate recollection.

Ms. Dean. Are you surprised to learn that?

Ms. Hicks. Yes, very surprised.

Ms. Dean. Why?

Ms. Hicks. Because I, like I said, wasn't aware of any contacts during my time on the campaign.

Ms. Dean. And when you made the statement to the press -- this will be my final question so other people can get to the things that they're interested in learning about.

But when you made the statement to the press that there were no contacts between the Trump campaign and Russia -- I'm paraphrasing a little -- I appreciate that it's November the 8th of election year. Did you have a conversation with the President before or after that statement?

Ms. Hicks. I did not speak to him before. I spoke to others on the campaign, other senior officials.

Ms. Dean. And what was their guidance in terms of making that answer?

Ms. Hicks. That there were no contacts.

Ms. Dean. And who was it who told you there were no contacts?



Ms. Hicks. I believe I spoke to several people. Jason Miller, Jared Kushner. I believe Jason Miller may have reached out to Kellyanne Conway and Steve Bannon.

Ms. Dean. How about Donald Trump, Jr.?

Ms. Hicks. I did not seek his guidance before responding to that question.

Ms. Dean. And my final question is, what did the President -- you said you did not talk to the President before the statement. What was your conversation with the President-elect after that statement?

Ms. Hicks. I don't recall any specific conversations.

Ms. Dean. You and he in transition did not talk about your statements to the press regarding Russia?

Ms. Hicks. I'm sure there were conversations. I just don't recall anything specific that I could relay to you.

Ms. Dean. Thank you.

Ms. Mucarsel-Powell. Ms. Hicks, my name is Debbie Mucarsel-Powell, and I represent Florida's 26th District.

Thank you for coming. I really do commend you for coming here today. I know it's a very difficult situation to be in, you know, having the Judiciary Committee questioning you. So I'm grateful that you decided to come in and testify. And I apologize if we've heard this before, but we've been in and out, so I just want to regroup a little bit.

You were hired by the campaign when exactly? What was the

date?

Ms. Hicks. I started working -- well, the campaign didn't exist until later in the spring. But I started working on campaign-related events in January of 2015.

Ms. Mucarsel-Powell. And when you started working for the campaign, what was -- did you have a title? What were your job responsibilities? What was asked of you?

Ms. Hicks. I was the press secretary and primarily consisted of coordinating media opportunities at speaking engagements. There were a lot of summits that Mr. Trump attended as a prospective candidate and then as a candidate, as well as, you know, days spent in New Hampshire, Iowa, South Carolina, and media opportunities associated with those trips.

Ms. Mucarsel-Powell. And you reported to the President, President Trump, from the very beginning?

Ms. Hicks. I did, yes.

Ms. Mucarsel-Powell. And were you with him, you say, on a daily basis, communicating with him personally on the part of the senior team advising him on the campaign?

Ms. Hicks. Yes, ma'am.

Ms. Mucarsel-Powell. Who in the campaign was responsible for the messaging strategy?

Ms. Hicks. Primarily Mr. Trump.

Ms. Mucarsel-Powell. Okay. What do you think was the message that was ultimately the winning message for the campaign?

Ms. Hicks. I think that he -- I think he gave people who lost faith a reason to keep fighting for what they believed in, and I think he offered change, because he was an outsider and he was going to come here and shake up the system.

Ms. Mucarsel-Powell. Were there any conversations that you were involved in that dealt with anti-immigration campaign messaging?

[Discussion off the record.]

Ms. Hicks. I don't believe any of Mr. Trump's messaging is anti-immigrant. I believe he's very pro-legal immigration. I believe he's opposed to illegal immigration. And I think he's made that distinction.

Ms. Mucarsel-Powell. Were there any points during the campaign that you thought he was saying things that were not appropriate or that you felt uncomfortable with?

Ms. Hicks. Yeah. I don't know anybody that agrees 100 percent with what their boss says and does. I think that's a ridiculous standard. So of course there are things.

Ms. Mucarsel-Powell. So the President has tweeted that nobody disobeys my orders. Would you say that that's true? Is that correct?

Mr. Philbin. To the extent that the question is relating to her time in the White House as a senior adviser to the President, I object to --

Ms. Mucarsel-Powell. It's a question of whether he

thinks -- that that's an accurate statement from the President. It's not when she was working, as today. And I'm asking the question.

Mr. Philbin. But if it's based on knowledge, you're asking about what --

Ms. Mucarsel-Powell. I'm asking what she believes today.

Mr. Philbin. Based on knowledge being while at the White House. To the extent you're asking about that, we object.

Ms. Mucarsel-Powell. So are you claiming privilege?

Mr. Philbin. We're claiming that she has an absolute immunity, as we've gone through many times already today, to be compelled to testify.

Ms. Mucarsel-Powell. On her opinion?

Mr. Philbin. To be compelled to testify about her time as a senior adviser from the President. If you're asking about her opinions formed during her experience during that time, we object.

Ms. Mucarsel-Powell. Okay. Thank you.

If Mr. Trump asked you to do something that you felt was improper, would you have told him no during the campaign?

Ms. Hicks. I'm not going to speculate on that hypothetical. If you have a specific example.

Ms. Mucarsel-Powell. Have you ever told the President that you don't agree with him directly?

Ms. Hicks. Of course.

Ms. Mucarsel-Powell. When you were -- during the campaign?

Ms. Hicks. Of course.

Ms. Mucarsel-Powell. You did. And what was the President's reaction at the time?

Ms. Hicks. The President is very willing to listen. I think he likes dissenting voices. I think he likes to hear many different perspectives. Ultimately he does what he feels is best, but he's always willing to listen. I always felt very respected in that regard.

Ms. Mucarsel-Powell. Can you give me an example of a time that you told him you didn't agree with him on something?

Mr. Philbin. On the campaign?

Ms. Mucarsel-Powell. Yeah, on the campaign.

Ms. Hicks. I can't think of anything right now, but certainly -- certainly many times, I'm certain, that --

Ms. Mucarsel-Powell. You can't recall one example of the many times during the campaign?

Ms. Hicks. You know, most of them related to things like -- certain messages, whether or not to pursue certain opportunities, whether or not to engage with certain individuals, whether they be opponents or, you know, reporters, journalists, those kinds of things.

Ms. Mucarsel-Powell. Okay. Now, one question. If the President-elect had asked you to do something that you felt was improper, would you have told him no during the transition?

Ms. Hicks. I'm not going to speculate on a hypothetical.

Ms. Mucarsel-Powell. Did you ever tell him that during the transition, if he was doing something that you felt was improper?

Mr. Trout. Objection. She's answered that. She's not going to speculate about --

Ms. Mucarsel-Powell. No, no. It's not speculating. I'm asking if she ever has told him no during the transition, if he was asking her to do something that was improper or if he was conducting himself in an improper manner.

Mr. Trout. Well, it assumes that he did ask her something that was improper.

Ms. Istel. She's asking if that's true, though, did he ever ask her to do something improper during the transition.

Ms. Hicks. Not that I recall.

Ms. Mucarsel-Powell. Did you ever see anybody during the campaign telling Mr. Trump no when he asked them to do something?

Ms. Hicks. Yes.

Ms. Mucarsel-Powell. Can you give me a specific example?

Ms. Hicks. I don't want to speak for others' experience. I've shared my experiences, and I'm good with that.

Ms. Mucarsel-Powell. Let me move on to your time -- your current employment.

So what are you doing right now? What is your current employment?

Ms. Hicks. The executive vice president and chief communications officer for the Fox Corporation.

Ms. Mucarsel-Powell. Okay. And how did you get that job?

Ms. Hicks. I interviewed for that job with Lachlan Murdoch.

Ms. Mucarsel-Powell. Did you discuss the job with the President before taking it?

Mr. Purpura. Objection.

Ms. Mucarsel-Powell. This is after she resigned.

Mr. Purpura. Okay. Thank you.

Ms. Hicks. I did discuss it with him after I'd been offered the position.

Ms. Mucarsel-Powell. And what was his -- what did he say to you? What was his reaction?

Ms. Hicks. Congratulations.

Ms. Mucarsel-Powell. Anything else?

Ms. Hicks. No. That was the nature of our conversation. I was calling to let him know that I planned to accept the offer and that I was moving on to my next step.

Ms. Mucarsel-Powell. And did you list him as a reference?

Ms. Hicks. I don't believe I listed any references.

Ms. Mucarsel-Powell. They didn't ask for references when they interviewed you for the job?

Ms. Hicks. Not that I provided. Obviously quite public, much to my chagrin, and I believe that most of the people that they spoke with were actually reporters, journalists, those types of people.

Ms. Mucarsel-Powell. And when you joined the Fox team, do

you recall issuing a statement supporting the First Step Act?

Ms. Hicks. The Fox Corporation did that, yes.

Ms. Mucarsel-Powell. And you were a part of the team that issued that statement?

Ms. Hicks. Yes.

Ms. Mucarsel-Powell. Okay. And did you -- prior to doing that, did you discuss it with anybody from the Trump administration?

Ms. Hicks. Yes.

Ms. Mucarsel-Powell. And who was that person?

Ms. Hicks. Jared Kushner.

Ms. Mucarsel-Powell. Okay. So -- because you knew that he supported -- publicly supported that act?

Ms. Hicks. That's not a question. That's a statement.

Ms. Mucarsel-Powell. Did you know that Jared Kushner publicly supported that act?

Ms. Hicks. I knew that the Trump administration supported that. Jared conveyed that to me. But I also follow the news.

Ms. Mucarsel-Powell. And did he ask you to support it and to release a statement?

Ms. Hicks. Not me personally. He asked if this would be something that Fox would be interested in supporting legislation. It's something Fox has done previously, offer their support to legislation. At least that's my understanding. I'm obviously new. And it was something that our government relations team had



spoken to other Members of Congress about. So that's how that unfolded.

Ms. Mucarsel-Powell. According to some of the news articles, Kushner called you about the act prior to issuing your statement in support. Is that true?

Ms. Hicks. I just said that, yes.

Ms. Mucarsel-Powell. Okay. And since joining the Fox team, has anyone from the Trump administration, the Trump family, anyone working for the President, asked you to make any public statements?

Ms. Hicks. No.

Ms. Mucarsel-Powell. Okay. Who is right now paying your lawyer fees?

[Discussion off the record.]

Ms. Mucarsel-Powell. Does the RNC pay for the --

Mr. Trout. I think it's a matter of public record that the RNC pays --

Ms. Mucarsel-Powell. Is it the RNC?

Mr. Trout. Yes, and it's been publicly disclosed.

Ms. Mucarsel-Powell. And has anybody else paid for your legal fees during this process?

Ms. Hicks. No.

Ms. Mucarsel-Powell. So it seems that the news had reported that the RNC paid nearly half a million dollars to Trout Cacheris & Janis, which is your law firm, to pay for legal fees for members

of the Trump campaign. Do you know if the RNC paid for these fees? You confirm that?

Ms. Hicks. Yes.

Ms. Mucarsel-Powell. I'm going to move now to some of the special counsel investigation interviews.

You interviewed with the special counsel three times, correct?

Mr. Philbin. Objection. All of the interviews with the special counsel took place when Ms. Hicks was a senior adviser to the President. And as was explained earlier today, questions about those interviews and her role as a senior adviser is subject to immunity.

Ms. Mucarsel-Powell. All right. I don't have anything right now further. Thank you.

Ms. Hariharan. We just want to quickly address on the record, while the ranking member is here, he had flagged the protocols that govern this interview and some concerns that he had and he raised them on the record. And just want to say that we appreciate that he raised them and that they were addressed immediately and --

Mr. Collins. You had a member live tweeting and taking pictures.

[Discussion off the record.]

Mr. Gaetz. I'll reclaim a portion of the minority's time, just to seek clarification on that last point you made.

What event were you referencing and how was it handled, just for the sake of the record?

Ms. Hariharan. My understanding is that it involved a member taking a picture and a member tweeting about the transcribed interview, and we put a stop to it.

Mr. Gaetz. So will there be any remediation on those -- like the deletion of tweets or any further action? Or was it merely a directive to the member to stop?

Ms. Hariharan. If I may, sir, that is above my pay grade, but --

Mr. Gaetz. Would it be okay if we saw that verification, just for the sake of the record?

Ms. Hariharan. Yes.

Mr. Gaetz. Thank you. We'll yield back.

Ms. Scanlon. Ms. Hicks, Mary Gay Scanlon from Pennsylvania's Fifth Congressional District.

Ms. Hicks. Hi.

Ms. Scanlon. Can we just -- just to clarify, what was the date you started working in the White House?

Ms. Hicks. January 20th, 2017.

Ms. Scanlon. Okay. And when did you leave the employment of the White House?

Ms. Hicks. May 30th, 2018.

Ms. Scanlon. May 30th, 2018.

Ms. Hicks. Excuse me -- March. March 30th.

Ms. Scanlon. March 30th, 2018.

So that's when you left the White House?

Ms. Hicks. Yes.

Ms. Scanlon. And upon advice of White House counsel, you're not answering any questions regarding any events that occurred while you were working at the White House. Is that correct?

Ms. Hicks. Yes, ma'am.

Ms. Scanlon. What's your opinion of Don McGahn?

Ms. Hicks. I don't believe I'm here to offer opinions.

Ms. Scanlon. But I'm asking your opinion.

Mr. Philbin. And this question is based solely on her experience with him at the campaign?

Ms. Scanlon. At the campaign and the transition and any contact she's had with him since she left the White House.

Ms. Hicks. I haven't had any contact with him since I left the White House. And my opinion of him during the campaign and transition was that he was a good lawyer.

Ms. Scanlon. Has he ever lied to you?

Ms. Hicks. I don't know. You would have to ask Don McGahn that.

Ms. Scanlon. So you're unaware if he ever lied to you?

Ms. Hicks. Again, I don't know. You would have to ask Don.

Ms. Scanlon. Okay. Are you aware of him ever having lied to you?

Mr. Trout. I think she's answered this.

Ms. Scanlon. Is that a yes or a no? It's pretty simple.

Mr. Trout. No.

Ms. Scanlon. Do you know if Mr. McGahn has ever lied to you?

Yes or no?

[Discussion off the record.]

Mr. Trout. I think she's indicated that she doesn't know -- she doesn't know.

Ms. Scanlon. Are you aware of any instance in which he told you an untruth, to your knowledge?

Ms. Hicks. I don't --

Mr. Philbin. During the campaign or transition?

Ms. Scanlon. Or since then.

Ms. Hicks. During the campaign or transition, no. Since then, I don't know.

Ms. Scanlon. Have you -- during the campaign or transition or since then, are you aware of him ever having lied to anyone else, from your personal knowledge?

Ms. Hicks. Not during the campaign or transition.

Ms. Scanlon. Okay. Are you aware of him having lied to anyone else, to your personal knowledge?

Ms. Hicks. I don't know the answer to that.

Ms. Scanlon. Okay. Do you have any reason to doubt the truth of his account of his time in the White House as described in the special counsel's report?

Mr. Philbin. Objection. It's inherently a question about

the events in the White House. She can't answer it without referring to her knowledge from her time in the White House. So it's --

Ms. Scanlon. So White House counsel is instructing her not to answer based upon this unsubstantiated claim of absolute immunity?

Mr. Philbin. We're saying that she is immune under longstanding opinions of the Department of Justice across both Republican and Democratic administrations dating at least to the 1970s, and we are asserting that immunity here.

Mr. Collins. Going back to -- reclaiming -- going back, this has been stipulated to by your staff attorney. We went through this while people were not here so that we didn't have to go through this. So if they do make the objection, it's already stated in the record this is why it's for, and there's no need to lay a foundation any longer for this witness. Staff counsel on your side agreed to that characterization.

Mr. Eisen. Mr. Collins, I think that the question is a legitimate one, but they have -- I have continued to ask those questions in order to close out the area, as the Congresswoman has done.

Mr. Collins. But -- so if we wanted to, then we could refer back to the -- or I'll reclaim my whole hour and go back to this. But this is exactly -- we spent the whole time -- we spent about 10 minutes of this about 2 hours ago stipulating to this. And if

he's not stipulating to it, then why do we go through the exercise?

Ms. Scanlon. I'm happy to move --

Mr. Collins. No. I want Mr. Berke to answer this.

Ms. Istel. That's Mr. Eisen.

Mr. Collins. I apologize. Your counsel right there.

Mr. Eisen. I can ask Mr. Berke, too.

Mr. Collins. Mr. Berke, do you want to answer this as well?

Mr. Berke. I have a lot to say. I don't have a mike though.

Mr. Collins. You didn't stipulate. He did.

Mr. Eisen. I think that -- that we've agreed that when the White House counsel says objection, that implicates absolute immunity. I do think it will -- all you need to say is objection. That has been stipulated -- that has been stipulated for the record.

The Congresswoman is entitled to her questions.

Mr. Collins. But you also -- the reason you stipulated was so we could move this forward. Is that not correct?

So your exact words, I believe, were so that we would not have to spend time on this.

Mr. Trout. So could I interject?

Ms. Hicks has a flight out of Dulles at 7 o'clock, and as a matter of courtesy, I would hope that we can expedite the questioning and allow her to take her flight.

Mr. Collins. I've got no problem with that. We've spent the

last 35 minutes asking questions that were asked earlier.

Ms. Scanlon. I'm ready to move on, Mr. Collins.

Mr. Collins. Okay. Go ahead.

Ms. Scanlon. Okay. All right.

Have you spoken with Mr. McGahn since he left the White House? Since you left the White House? I'm sorry.

Ms. Hicks. No.

Ms. Scanlon. Okay. Did you ever see Mr. McGahn or anyone -- anyone else taking notes during meetings during the campaign?

Ms. Hicks. I wasn't often in meetings with Mr. McGahn during the campaign, so I don't have any recollection of that. He was based in Washington, D.C.

Ms. Scanlon. Okay. So you never saw Mr. McGahn taking notes during campaign meetings?

Ms. Hicks. I just don't have any recollection of it. There were very rare occasions, so --

Ms. Scanlon. Did you observe anyone else taking notes during campaign meetings?

Ms. Hicks. Anyone on the campaign? Sure. I'm --

Ms. Scanlon. Who?

Ms. Hicks. Advance team members writing down instructions, schedulers writing down dates. I mean --

Ms. Scanlon. Okay. Did you ever see Mr. McGahn's Chief of Staff Ann Donaldson taking notes, whether during the campaign or



during the transition period?

Ms. Hicks. I don't believe I met Ann in person until we started working at the White House.

Ms. Scanlon. Okay. Do you now or have you had any joint defense agreements with anyone in connection with your activities either during the campaign or since then?

Mr. Trout. Objection.

Ms. Hicks. Be privileged with my counsel.

Mr. Trout. I'm not going to answer that.

Ms. Scanlon. I believe you're not going to answer, but is she going to answer it?

Mr. Trout. No.

Ms. Scanlon. Okay. On what basis?

Mr. Trout. On privilege.

Ms. Scanlon. What kind of privilege.

Mr. Trout. Joint defense privilege.

Ms. Scanlon. The fact of having a joint defense agreement is not --

Mr. Trout. I will -- it will be privileged.

Ms. Scanlon. So you're not going to answer whether or not she has a joint defense agreement?

Mr. Trout. Right.

Ms. Scanlon. Okay. I think I'm through.

Thank you.

Mr. Trout. Thank you.

Mr. Eisen. Go off the record for 1 second.

Mrs. Demings. I'm sorry. Not quite, but I won't be all day.

Again, Ms. Hicks, thank you so much for being here.

I'm just going to make this statement. I worked a lot of years around a lot of good men and women who took oaths to protect and defend the Constitution.

Ms. Hicks. And I read about your service in the police department. It's very impressive.

Mrs. Demings. Thank you. But I was talking about others.

Ms. Hicks. Yes.

Mrs. Demings. Because I like to give credit away.

I've attended a lot of law enforcement funerals of people who died, people of integrity, people of honor, people who have a relationship with the truth and lost their lives trying to defend it.

And so this -- again, I'm honored to serve on the Judiciary Committee. But there are some things that this committee is working hard for every day to try to protect, and it's those things that those men and women lost their lives for.

So I do thank you for coming in today, because there has been, as you know very well, a move to totally ignore the authority that has been given to this committee and to ignore subpoenas.

I'd just like to start off by -- why did you come today? Why did you show up today?

Ms. Hicks. Because I was asked to be here, and I, like you, have great respect for those that have served, to protect the freedoms and institutions which you all serve and sacrifice on behalf of. And so it's my pleasure to be here. I just want to make sure we use our time as efficiently as possible. That was my only comment earlier.

Mrs. Demings. I don't have a problem with that. I believe time is our greatest resource.

Ms. Hicks. Yeah.

Mrs. Demings. But sometimes getting to the bottom of exactly what happened can take its time.

Ms. Hicks. I totally understand.

Mrs. Demings. And that's why we're here.

Going back to -- and thank you for your answer, because that's refreshing and encouraging, the reason why you're here today.

Going back to your time during the campaign.

Ms. Hicks. Yes, ma'am.

Mrs. Demings. And it's been interesting listening to all of the objections that we've had here today, because I really believe investigations and questioning cannot only -- you know, we're in search of the truth, right? So in order for us to be able to get there, I think we need to hear all of the information.

So it's been interesting to listen to all of the objections coming from the White House about anything that you are asked

during that time, because I believe it could be used as a way to clear up any suspicions of things that may have taken place or that you may have been involved in.

So I really see it, as a former law enforcement officer, as a disservice to the White House for you not to be able to talk about anything or any experience, good or bad, that you had there.

But anyway, getting back to your time on the campaign, did you ever have any conversations or overhear then candidate Trump talk about or acknowledge Russia's interference in the election or any other state actor interfering in the 2016 election? Did you ever hear any conversations?

Ms. Hicks. I think I said this earlier --

Mrs. Demings. I'm sorry, I --

Ms. Hicks. That's okay -- that any discussion about the hacked emails or interference, any discussion privately, only echoed what he stated publicly.

So, for example, some of those conversations were around debate prep, how he would answer that question in the debate. And I will tell you the answer that he said privately is exactly what he said publicly.

Mrs. Demings. In terms of messaging, you were the press secretary and the only one. We've certainly heard that. Did you ever hear him exhibit any frustration, as someone who was running for President of the United States and is responsible for protecting our Nation against cyber attacks or any other type of

attacks, did you ever hear him during the campaign indicate any frustration at even the possibility of Russia or any other foreign actor attacking the United States of America?

Ms. Hicks. Yes. And I hesitate to speculate, but I believe that --

Mrs. Demings. I'm just asking if you overheard conversations. You don't have to speculate.

Ms. Hicks. I did. I did. And I hesitate to speculate. But I'd also add that I believe that Mr. Trump feels and many others feel that we would all be better served if that is what we were all focused on rather than --

Mrs. Demings. I'm focused on it right now.

Ms. Hicks. I know you are -- rather than, you know, if anything untoward happened with the campaign.

Mrs. Demings. I'm focused on it right now, because this is where this all started, right, an attack on the United States of America. And we should all be concerned about that.

Ms. Hicks. Yes, ma'am.

Mrs. Demings. So during the campaign, as the press secretary, do you remember then candidate Trump expressing any frustration at the very thought of Russia or any other foreign actor attacking the country that he wanted to be the President of?

Ms. Hicks. Yes. I think that was -- I think that was inherent in his responses.

Mrs. Demings. And what were some of those? Could you give

me some examples of what his responses would have been to demonstrate that frustration or any action that he would take should he win the Presidency?

Ms. Hicks. I don't recall any -- anything verbatim certainly. But, you know, I think that it was inherent in his message about being respected again as a power on the world stage and that he would take action to ensure that America was respected again and that we weren't subject to these kind of attacks.

Mrs. Demings. Did you ever hear him again talk about specifically, since Russia's name was being thrown around, that he would hold Russia accountable should he win the Presidency?

Ms. Hicks. I don't recall him --

Mrs. Demings. That would have been a major part of his messaging?

Ms. Hicks. Yeah, I don't -- I don't recall him making any kind of assertions like that. I know he was hesitant to do things like draw, quote, redlines, right? So I don't recall him stating any specific action he would take if that were, in fact, true. But I'm happy to go back and look and see what was said. And I'm sure you all will do that as well.

Mrs. Demings. During your time with the campaign -- let me make that clear -- did you ever hear mention of the Trump Tower Moscow project?

Ms. Hicks. So just to clarify, I worked at The Trump Organization as well.

Mrs. Demings. Okay.

Ms. Hicks. And Trump Tower Moscow was somewhat of a pipe dream over the years. So I did hear, you know, through reviews of past projects or deals in pipelines or things that were pursued -- not directly from him, perhaps, but I did hear of past attempts to enter that market. But I did not hear any discussion from any Trump Organization employees or Mr. Trump about an ongoing effort to pursue a potential Trump Tower Moscow at that time.

Mrs. Demings. Is that where you met Mr. Trump, was during that -- and if you have already answered, I apologize for that -- but is that where you met Mr. Trump, was during your employment at The Trump Organization?

Ms. Hicks. I met Mr. Trump before I became a full-time employee there. But I was working with the organization and the family via an agency that I was employed by.

Mrs. Demings. So you didn't hear any mention or don't remember any mention of the Trump Tower Moscow deal directly from Mr. Trump?

Ms. Hicks. That's correct.

Mrs. Demings. Did you ever hear any mention of that deal from Michael Cohen?

Ms. Hicks. I did not.

Mrs. Demings. Or Donald Jr.?

Ms. Hicks. I did not.

Mrs. Demings. Okay. And how many -- so back to the Trump Moscow Tower project. You heard it as pipe dream; this was something he was very interested in.

Do you remember in your time at the organization --

Ms. Hicks. That's not -- that's not totally accurate.

Mrs. Demings. Oh, okay.

Ms. Hicks. I heard it as -- it was mentioned as, you know, a marketplace that had been previously pursued, when we would talk about growth pipelines for the hotel, which was -- the hotel division of the company was undergoing sort of a rapid expansion. I think they had over 80 potential deals in the pipeline at the time I joined the company. So, you know, in talking about the strategy and growth.

Mrs. Demings. Who did you hear that from, those discussions about the possibilities in --

Ms. Hicks. A combination of people, people that worked on the development side of the company, the marketing side of the company, license -- the license division of the company.

So it was more of an historical reference, if anything, to something that had been pursued in the past. But again, nothing current from anyone at The Trump Organization, including the President or Michael Cohen or Don Jr.

Mrs. Demings. Okay. Do you know who Felix Sater is?

Ms. Hicks. Only from media reports and --

Mrs. Demings. You never heard the name prior to any media



reports?

Ms. Hicks. I did not, no.

Mrs. Demings. Okay.

Ms. Hicks. I obviously discussed media reports with people at The Trump Organization. Like I got a request about this person, who is it, or there's this article, do we know this person, things like that. But prior to seeing his name, either from a media request or in the press, no, I did not.

Mrs. Demings. Okay. And during your time with the campaign, did you ever hear the name Felix Sater associated with the campaign?

[4:07 p.m.]

Ms. Hicks. Associated with the campaign?

Mrs. Demings. Or during the campaign, during the time of the campaign.

Ms. Hicks. Yes. You know, there were often media requests sort of asking about his past affiliation with The Trump Organization, what exactly his role was, who he worked with, what he did, if he was affiliated with The Trump Organization. I think there was some confusion about that.

The one specific thing is I think he may have made an online donation to the campaign that we weren't aware of until the press pointed it out to us, and that was sort of a storyline. I might be mixing him up with someone else, but I believe that's accurate.

Mrs. Demings. And excuse me, but who was talking about Felix Sater during the campaign? Who would that have been?

Ms. Hicks. Nobody in the campaign -- this is purely in response to media requests or media reports.

Mrs. Demings. Okay. Okay. So the only discussions that you had or overheard or know of about Felix Sater was from The Trump Organization --

Ms. Hicks. Yes.

Mrs. Demings. -- those who worked --

Ms. Hicks. Yes. The Trump Organization, there was a lawyer there that I would often work with, crafting responses to questions, as he understood Felix's involvement with The Trump

Organization years prior to my role there.

Mrs. Demings. Okay.

During the campaign, did Mr. Trump or Michael Cohen or Donald, Jr., or anyone associated with the campaign ever advise you to not be truthful about The Trump Organization's relationships or dealings or conversations or timeline as it pertained to the Trump Tower project?

Ms. Hicks. No. Like I said, I wasn't aware of the project. So I couldn't be advised to lie about something I didn't know about.

Mrs. Demings. Okay. Did anybody associated with that long list -- because I know we're on a timeline here -- that I just went through -- don't make me do it again --

Ms. Hicks. Yeah.

Mrs. Demings. -- talk to you about not even discussing in any fashion anything about Moscow or the possibility of building something lucrative or making a deal in Moscow?

Ms. Hicks. No.

And, again, I don't want to speculate, but I'd just like to say that, knowing Mr. Trump the way I do, I think that if there were anything more than just the pursuit of a deal, I believe it would be something, regardless of the location, Moscow or not, that he would view as a success and he would be touting it.

I think the only reason that it wasn't discussed openly was because it wasn't -- it was nothing. It was a letter of intent.

There are dozens of those signed by real estate companies on a daily basis.

Mrs. Demings. Right. When did you learn of the letter of intent?

Ms. Hicks. In the fall of 2017.

Mrs. Demings. Do you remember any discussions at all about any dealings of any kind during the campaign with Russia?

Ms. Hicks. We went through this earlier and --

Mrs. Demings. I'm sorry.

Ms. Hicks. No, that's okay -- described conversations I had with Don, Jr., contextualizing statements he made in 2008 regarding what I believe he said was Russian money pouring in. And that was it.

Mrs. Demings. And Don, Jr., made that statement?

Ms. Hicks. In 2008, yes, and the press wrote about it.

Mrs. Demings. And you never heard him discuss anything about dealings or business deals in Russia after 2008 that you remember?

Ms. Hicks. No. And, again, you know, I wasn't an employee in 2008. I just meant that I discussed during the campaign the context of that comment that he made.

Mrs. Demings. Did you ever remember any conversations either directly with Mr. Trump or others associated with him during the campaign regarding him traveling -- Mr. Trump, that is -- to Russia?

Ms. Hicks. Just for the Miss Universe Pageant.

Mrs. Demings. Okay. That was the only conversation that you ever heard. Nothing to do with any deals, projects, or any of that?

Ms. Hicks. No, ma'am.

Mrs. Demings. Okay. Thank you.

Did you ever discuss with anyone the possibility or overhear a discussion about the possibility during the campaign of then-candidate Trump meeting with Vladimir Putin?

Ms. Hicks. No. No. Obviously, as part of this process, I've reviewed emails which indicate that that was being discussed perhaps in the press at a point in September 2015. But I never heard anything directly from anyone, and obviously it didn't happen.

Mrs. Demings. Okay.

And do you have any knowledge of a foreign government providing cash or any other thing of value to Mr. Trump during the campaign?

Ms. Hicks. No, ma'am.

Mrs. Demings. Okay.

Sorry. Just give me just one second here.

You made a comment to Ms. Dean, the woman who was sitting here, blond hair --

Ms. Hicks. Uh-huh.

Mrs. Demings. -- and I made a note about it. I can't find it right now. But it said something to the effect of questioning

the purpose of this interview today.

What did you mean by that? You said that the purpose -- you questioned the purpose of the interview. I mean, what do you believe or what do you feel the purpose of this interview is today?

Ms. Hicks. To be honest, I'm not really sure. I don't believe I've provided --

Mrs. Demings. I'm sure your attorneys -- you have several here that are either representing the White House and others. What do you believe, based on your conversations with them or whatever, in any discussions you've had with others, about the purpose of your being here today? What do you believe --

Ms. Hicks. Well, as we discussed --

Mr. Trout. Just to be clear --

Ms. Hicks. I'm sorry, Bob.

Mr. Trout. -- the attorneys in the White House do not represent her. She's represented by Gloria Solomon and myself alone.

Ms. Hicks. And as --

Mrs. Demings. She certainly looked to them for guidance today, but --

Mr. Trout. She's made this clear and we've made this clear, that because she is a former employee she is going to accept the guidance of the executive branch about what questions are appropriate for her to answer and that, absent any objection from

the White House, she would answer questions.

Mrs. Demings. Okay.

So, Ms. Hicks, back to you. Thank you so much for being willing to answer the questions.

Ms. Hicks. Yeah, sure. Like we exchanged earlier, I'm happy to -- it's my pleasure to be here. It was a privilege to serve, and if this is part of my ongoing responsibilities as part of that service, I'm more than happy to show up here and answer questions and hopefully be helpful to you.

And all I meant by questioning the purpose was just that I don't believe that I've provided any new information that I haven't provided to multiple different bodies investigating this very same thing. Hopefully you all feel differently and you got something out of this, but that was all I meant by that.

Mrs. Demings. It probably could've been more productive had we not heard "objection" a thousand times. But, anyway, thank you so much for your cooperation.

Ms. Hicks. You're welcome.

Mrs. Demings. Thank you.

BY MR. EISEN:

Q Ms. Hicks, returning to the Mueller report, Volume II, I believe we were on or around page 104, the Don, Jr., statement about the Trump Tower meeting. There's a reference to Mr. Corallo. Who is Mr. Corallo?

A I don't really know him, to be honest. He was part of

the team the President assembled of outside lawyers. I don't believe he was serving in a counsel role. He was primarily in a communications role.

Q And he was not a government employee at that time, correct?

A That's my understanding.

Q Not a government official --

A That is my understanding.

Q -- at the time of these communications.

Okay. On to page 105.

Will you answer any questions about the special counsel's statement that on, at least three occasions in June and July of 2017, the President directed you and others not to publicly disclose information?

Mr. Purpura. We would object to those questions.

Mr. Eisen. And would you assert absolute immunity as to this entire area of subject matter?

Mr. Purpura. Well, again, the subject matter being the statements and subjects that are described in --

Mr. Eisen. Yes, this section of the special counsel report.

Mr. Philbin. Just to be clear, by "section" are you referring to the subsection lettered A that begins on page 105 and extends to 106 or subsections B and C as well?

Mr. Eisen. I'm referring to the entire section on the subject matter of Ms. Hicks' activities in the White House



relating to the Don, Jr., statement about the Trump Tower meeting, that entire subject matter in the Mueller report.

Mr. Purpura. We would object to those questions.

Mr. Eisen. Okay.

And just for the record, Ms. Hicks, would you answer any information about the President's efforts to have Mr. McGahn dispute the press reports as set forth on page 114? There's a recollection about what you relayed to the President.

Ms. Hicks. I was already asked this, and they objected.

Mr. Purpura. Objection.

Mr. Eisen. Same objection as to this entire, again, subject matter --

Mr. Purpura. Yes.

Mr. Eisen. -- this entire subject matter.

Do you remember calling Michael Flynn during your White House service to relay on behalf of the President that the President hoped Flynn was okay?

Mr. Purpura. Objection.

Mr. Eisen. Same objection as the entire subject matter?

Mr. Purpura. Meaning any phone calls or discussions relaying a message to --

Mr. Eisen. Yes.

Mr. Purpura. -- General Flynn?

Mr. Eisen. Yes.

Mr. Purpura. Yes.

Mr. Eisen. All communications concerning Michael Flynn while she was serving in the White House.

Mr. Purpura. Yes.

BY MR. EISEN:

Q Okay. Did you hear candidate Trump tell Mr. Gates, Rick Gates, to keep an eye on Manafort at any point during the campaign?

A Yes.

Q Tell me about that incident.

A It was sometime after the Republican Convention. I think Mr. Trump was displeased with the press reports regarding the platform change, the confusion around the communications of that, Paul sort of stumbling in some interviews and then trying to clarify later and it just being messy. So he was frustrated with that.

I don't think that Mr. Trump understood the longstanding relationship between Rick and Paul. I think he, you know, obviously knew that Rick was Paul's deputy but not maybe to the extent of -- you know, didn't understand the extent of their relationship.

And he said something to the effect of -- you know, I'm very much paraphrasing here, so I want to be very careful -- but sort of questioned Paul's past work with other foreign governments, foreign campaigns, and said that, you know, none of that would be appropriate to be ongoing during his service with the Trump

campaign and that Rick needed to keep an eye on that and make sure Mr. Trump was aware if anything led him to believe that was ongoing.

Q What do you mean by the "platform change"?

A Whatever was reported in the press. To be honest, I had no knowledge of it during the actual convention.

Q Is it a reference to the change in the RNC platform concerning arming Ukraine?

A Again, I'm not familiar with the details.

Mr. Davis. Quick question. I'm sorry to interrupt your flow. I'm just trying to get a gauge for how much you have left. We're on hour 8.

Mr. Eisen. Very little.

Mr. Davis. Okay. That's great. Thank you. I just want to be mindful of northern Virginia traffic on the way to Dulles, which is getting worse by the day.

Mr. Eisen. We are mindful.

Ms. Hicks. I still have to get my bags.

Mr. Eisen. Did you have any question while serving as a government -- any conversations while serving as a government employee in the White House about Paul Manafort?

Mr. Purpura. Objection.

Mr. Eisen. Would you answer any questions on the subject matter of Paul Manafort while serving in the White House?

Mr. Purpura. We would assert the objection.

Mr. Eisen. Okay. We're just going to --

Ms. Hicks. I'm happy to answer any outside of my government service.

Mr. Eisen. I think we've stipulated -- okay. Ms. Istel is going to ask a couple of last questions. We're going to do the documents and call it a day.

Ms. Istel. So I'll be as quick as I can. I'm going to give you a copy of your production that you gave us. We just have a couple of clarifying questions. I have a copy for your counsel or the White House counsel or whichever counsel.

Mr. Collins. Do you have extra copies of that?

Thank you.

Ms. Istel. I'm happy to share mine.

Mr. Collins. We are still here, so thank you.

BY MS. ISTEEL:

Q Okay. So HCH1 through 08 looks like an amended SF-86 form?

A Correct.

Q The first page is a letter to Ms. Rodgers from Jay -- you'll have to excuse my pronunciation.

A Malcynsky.

Q -- Malcynsky. Thank you. And this describes that you had amended your SF-86 form. Is that correct?

A Yes.

Q Who told you to amend that form?

A I don't recall.

Mr. Trout. Yeah, don't get into conversations you had with Mr. Malcynsky, her attorney at the time. But, otherwise --

BY MS. ISTEEL:

Q Well, how did you become aware that you needed to submit amended answers to this form, if you recall?

A I believe it was instigated by my agreement to respond to -- you know, my agreement to voluntarily respond to questions from the Senate Intel Committee in writing, which you see here, and, when going through those questions, realized that I had left off some contacts that needed to be shared.

Q And just so we can clarify for the record, Ms. Hicks is referring to HCH09 through 011, which is -- I guess you're saying that these questions were written in response to an inquiry from the Senate Intelligence Committee. Is that correct?

A That's right. The questions are there provided as well.

Q Yes. Thank you.

And did you provide the Senate Intelligence Committee any other documents in connection with that testimony?

A Bob?

To my recollection, not to this initial voluntary response, but Bob can answer more fully regarding the followup that ensued.

Mr. Trout. Yeah. I think that HCH12 and, I believe, following to --

Ms. Istel. Through 30 is the first production you gave to

us.

Mr. Trout. Through 14.

Ms. Istel. Okay. Were those the one documents provided?

Mr. Trout. Yes, as part of this supplemental.

Ms. Istel. When you say "supplemental," was there an initial production that you provided to the Senate Intelligence Committee?

Mr. Trout. Well, in other words, this is supplementing the amendment to the SF-86.

Ms. Istel. But so, just to clarify, did you provide any other documents aside from what's in this packet to the Senate Intelligence Committee?

Mr. Trout. No.

Ms. Istel. Did the White House provide you any documents in preparation for your testimony with the Senate Intelligence Committee?

Mr. Philbin. Objection.

Mr. Purpura. Objection.

Mr. Philbin. That was during her time when she served as a senior advisor, and any interactions with the White House would be subject to the immunity.

Ms. Istel. Did the White House provide you any documents in connection with preparation for your testimony for this hearing?

Mr. Purpura. Objection.

Ms. Istel. That's since she left the White House, correct?

Mr. Trout. No, the White House has not provided documents.

Ms. Istel. I imagine I'll get the same response, but did the White House provide any documents in connection with Ms. Hicks' interviews with the special counsel?

Mr. Purpura. Objection.

Ms. Istel. Did the White House assert any privilege over Ms. Hicks's testimony to the special counsel?

Mr. Purpura. Objection.

Mr. Philbin. Well, we're asserting immunity here. If you want to ask us our legal views about immunity and privilege, we could get into that, but the objection --

Ms. Istel. I think I'll spare Ms. Hicks from that dialogue. We'll move on.

HCH12, 13, and 14 are emails to Ms. Hicks from various individuals. And they were referenced in footnotes in the Mueller report that Mr. Eisen read into the record, so we won't waste anyone's time on those.

But I just want to ask whether there will be an objection to Ms. Hicks testifying about these documents. January 27th, 2017, and --

Mr. Philbin. Well, for anything after January 20th, 2017, at noon, we would object to her testifying about the documents unless -- and we're only seeing these for the first time -- unless these are personal, which they don't appear to be.

Ms. Istel. Okay.

HCH0015, to clarify for the record, is an email chain. The

first email is on Sunday, August 27th, from Tom Hamburger to Michael Cohen, and it asks a series of questions relating to Trump Tower Moscow project. Mr. Cohen forwarded that email to Ms. Hicks, Jay Sekulow, and Stephen Ryan on August 27th, 2017.

Do you recall why Michael Cohen forwarded you that email?

Mr. Philbin. We'll object to that.

Ms. Istel. Did Michael Cohen forward you any emails during the transition relating to Trump Tower Moscow?

Ms. Hicks. Not that I'm aware of, no. The first time I recall learning about this project was in August of 2017.

Ms. Istel. Was this email the first time you learned about the project?

Ms. Hicks. No, but just prior to is my recollection.

Ms. Istel. I just want to clarify for the record that the White House is objecting to our examination of documents that have already been produced. Is that correct?

Mr. Philbin. We are objecting to her answering questions about communications that she had while she was a senior advisor to the President even if this document has been produced. She is immune from being compelled to testify about her service as a senior advisor to the President.

This is the first time that we've seen this document, here live. And as we've discussed with Eisen, after today, we may be able to talk about things. But for today, for purposes of the subpoena and for this hearing, we are asserting immunity.



Ms. Istel. All right.

And just to clarify for the record, the email exchange goes, actually, through --

Mr. Purpura. To be clear, we have seen the documents before in relation to what was produced to this committee.

Mr. Trout. Right.

Mr. Purpura. But we are saying the first time we are seeing it today is -- you know, there was no discussion of what documents may be shown or what discussions there may be. And so, consistent with what Mr. Philbin said on the immunity, we're not going to allow questioning on the documents today during the time of her service as a close advisor to the President. But reiterating what Mr. Philbin said and consistent with our conversations with Mr. Eisen and Mr. Berke, these may be subject to our further discussions.

Ms. Istel. It's okay with me, but Norm is not as nice as I am. So okay.

Okay. HCH015 through 017, for the record, that's the email exchange over which we were just discussing.

HCH018 and HCH019 and HCH020 and 021 and 022 and 23 are all text message exchanges between you and Michael Cohen. Is that correct?

Ms. Hicks. Yes.

Ms. Istel. These say January 8th, but they don't have a year. Do you recall if this is 2016 or 2017?

Ms. Hicks. It's 2018.

Ms. Istel. 2018. Will you answer questions on these text messages?

Mr. Purpura. No. We would object for the same reason.

Mr. Eisen. Was Mr. Cohen a government employee at the time you exchanged these text messages with him?

Ms. Hicks. He was never a government employee.

BY MS. ISTEEL:

Q HCH024 is a text message exchange with Brian and the initials B.L. Who is Bryan L.?

A Bryan Lanza. He's a surrogate.

Q A surrogate for?

A The Trump administration. He worked on the Trump campaign.

Q And these are also from January. Is this also January 2018?

A Yes, that's 2018.

Q Will you answer questions relating to this text message?

Mr. Purpura. We will assert an objection.

BY MS. ISTEEL:

Q Was Bryan L. a Trump administration official?

A No.

Q Okay. HCH025 is an email from Josh Raffel to Ms. Hicks on April 10th, 2018. It's a forward originally from Peter Nicholas to Josh Raffel. Who is Josh --

A It's Josh Raffel.

Q -- Raffel? Raffel. Sorry.

A He's a friend.

Q Does he have any connection to the Trump administration?

A Yes. He was the deputy communications director.

Q What about the White House? Does he have any connection in the White House?

A Yes. He worked in the White House, yes.

Q Okay.

A But this is after our service to the White House, and he's just asking if he can give this reporter my new contact information. That's all.

Q Did you still comment on behalf of the White House after you left your formal position?

A No, I didn't. I think they were just asking me to weigh in for my perspective.

Q Okay. Thank you.

A Obviously, Josh said to ignore, and that's what I did.

Q Did you ignore? Did you respond to that email?

A I don't believe I did, no.

Q Okay. Thank you.

HCH026, 027, 028, 029 are all text messages between you, Ms. Hicks, and Charles H. He introduces himself in the first message as Charles Harder. Did I get his last name right?

A Yes, you did.

Q Okay. And who is Charles Harder?

A He is one of the President's attorneys.

Q Personal attorney or White House attorney?

A Personal.

Q Will you answer questions on these text messages?

Mr. Philbin. Could we clarify the date?

Ms. Istel. Sure.

Ms. Hicks. It's May 2018.

Ms. Istel. That was after Ms. Hicks' time at the  
White House.

Mr. Philbin. Can you give us just a moment to look?

Ms. Istel. Sure.

[Discussion off the record.]

Mr. Purpura. No objection.

BY MS. ISTEEL:

Q Can you provide context for when Mr. Harder says, "Sorry to bother you. If you have a minute, can you give me a call?" Do you recall if you called him on that date?

A I did.

Q Do you recall what you discussed?

A I do.

Q Can you describe that for us, please?

A He wanted my advice about information he had regarding Michael Avenatti and how to best get that information into the press.

Q Can you read HCH027, please, into the record?

A Sure.

"Charles, just reading the front page story in the New York Times about contradicting statements. The story says the payment was made by Cohen at a time when media outlets were poised to pay Daniels for a story about an alleged affair. I don't believe this point has been raised in interview or tweets and not sure if it helps you, but I would say, 'Why is it acceptable for media outlets to pay to publicize mere accusations, but not OK for a person to pay to keep false allegations from being made public? Would these media outlets have disclosed the payment and would it have been considered a contribution to the Crooked Clinton Campaign, whom they were already working so hard on behalf of?'"

Q Do you mind just finishing the text message on page 028?

A Sure.

"The WSJ reported that she was shopping her story to GMA -- not a tabloid. 'Mr. Davidson also represented Stephanie Clifford, a former adult-film star whose professional name is Stormy Daniels and who was in discussions with ABC's "Good Morning America" in recent months to publicly disclose what she said was a past relationship with Mr. Trump, according to people familiar with the talks.'

"Anyways I need to stay out of this and will leave with you, but just a thought in terms of changing the narrative a bit from who knew what when."

Q Did you discuss that text with anyone before you sent it to him?

A I did not.

Q Did you discuss the subject matter of this text with the President?

A I did not.

Q You mentioned that you'd spoken to him 5 to 10 times in addition to your April dinner. In any of those conversations did you discuss Stormy Daniels?

A Never.

Q Hush money payments at all?

A Never.

Q Okay.

HCH029, he texted you again on May the 10th -- well, he first asked, "Thanks. When are you coming to LA?" There was no response. Then May 10th: "Hi. Sorry to bother you, but do you have 5 minutes to talk?"

Do you recall if you called him when he sent you that message?

A I already answered that question.

Q This is the same one as before?

A Yes.

Q I think it's a different --

A No, it's the same.

Q The first one was from May 1st, and it says, "If you

have a minute, can you give me a call?" And then this one is on May 10th, and it says, "Hi. Sorry to bother you, but do you have 5 minutes to talk?"

A Oh, I'm sorry. You're right.

Q That's all right. It's been a long day.

A I don't recall what this second text is.

Q But you sent him that article. Do you recall sending that article to him?

A Yes.

Q Did you discuss that article with anyone before sending it to him?

A You know what? Perhaps this was the conversation that --

Q That you meant originally from --

A Yes. And this, I don't know what that was about.

Q Okay.

Mr. Eisen. Just for the record, when you say "this, I don't know what that was about" --

Ms. Hicks. Sorry. That was 27.

Mr. Eisen. That's all right. I'll do it for you.

The witness was pointing to 27 and 28, right?

BY MS. ISTEEL:

Q The May 1st conversation in response to asking for a call, that's when she was -- okay.

Okay. HCH030, it's a text message exchange between Ms. Hicks

and Sarah H. Who is Sarah H.?

A Sarah Huckabee Sanders.

Q What is your relationship with Sarah Huckabee Sanders?

A She's a close friend.

Q And this is Wednesday, April 18th. Do you recall the year of this conversation?

A I believe it was 2018.

Q Were you still communicating with White House officials in providing advice on how to respond to the press at that time?

A I don't think she's asking for my advice. I think she's just curious if I know anything about this. I had just left the White House, and some things were --

Q Overlapping?

A -- still up in the air in terms of who to go to on things.

Q And you say, "No idea," so I'm not going to ask you if you have any idea.

HCH031 and 032, for the record, are two drafts of emails from Hope Hicks to Hope Hicks on November 4th, 2016.

Would you mind just reading both of them into the record? Because they're slightly different, and I just want to understand the difference between them.

A Sure.

"We have no knowledge of this false story allegedly being shopped around, although it comes as no surprise -- yet another



publicity hungry individual with a get rich and famous quick scheme at the expense of Mr. Trump. We suggest you reach out to the parties involved as we have nothing to do with this final attempt by the liberal elite to disparage Donald Trump and stop this historic movement."

The second version, HCH0032: "We have nothing to do with this final attempt by the liberal elite to disparage Donald Trump and stop this historic movement. We have no knowledge of this false story allegedly being shopped around, although it comes as no surprise -- yet another publicity hungry individual with a get rich and famous quick scheme at the expense of Mr. Trump."

Q Do you know what this was in reference to?

A I believe these were statements considered as we, you know, formulated a response to the Wall Street Journal inquiry about Karen McDougal.

Q Did anyone have input in these statements?

A Yes. Michael Cohen did. And I don't recall who else, but --

Q What about the President, or Mr. Trump at the time?

A He ultimately had input in what was said to The Wall Street Journal, but not in crafting these statements.

Q Did you show him these statements?

A Most likely I did. I don't remember, but most likely.

Q So I won't ask if you recall his reaction to them.

A Well, we gave a different statement, so if I did, it

probably wasn't good.

Q Okay.

Last one, HCH033. It's another text message exchange between yourself and Michael Cohen, November 5th, 2016.

Do you recall what you were discussing in this exchange?

Would it be helpful to read out loud into the record? I just was going to spare you, but --

A No. No. That's okay. Thank you. Yes, I remember. We were discussing the traction the Wall Street Journal story regarding Karen McDougal was getting.

Q So when you say -- I guess Cohen sent to you, "Keep praying!! It's working!" When he says "it's working," do you recall what he meant by that?

A I guess that our prayers were being answered.

Q He also says, "I have a statement by Storm denying everything and contradicting the other porn stars statement." Do you recall how he got that statement?

A I have no idea.

Q Did you ask him?

A I did not. I don't recall speaking to him about Stormy other than to relay what the reporter said to me, that she would be mentioned in story, but there was no additional context.

Q Did you discuss with the President having a statement from Stormy Daniels denying the incident?

A I don't recall that. I know the President had

conversations with Michael separate from me, so it's possible it was part of those. I don't recall being part of those conversations.

Q When they were having those conversations, did they ever ask you to leave the room?

A The conversations were had while we were traveling. Michael wasn't with us. And I was not present when the person was speaking to Michael on the phone.

Q We've asked ad nauseam about the President's relationship with Karen McDougal, but did you ever ask him if he had a relationship with Stormy Daniels? During the campaign. I see the movement from behind you.

A Again, I had no knowledge of Stormy Daniels other than to say she was going to be mentioned in the story amongst people that were shopping stories around. There were no specifics offered by the reporter, and I didn't have any other information other than what was being relayed to me by the reporter. So, no, I did not.

Q When you made statements during the campaign that the President did not have any relationship with Stormy Daniels, did you have a basis for saying that? Did the President tell you that he did not have a relationship?

A Again, I was relaying information from the reporter to the different parties involved, primarily Michael and Mr. Trump, and that was the response that was dictated to me. I didn't ask

about the nature of the relationships.

Q Okay.

So, going forward in the exchange, it looks like Michael Cohen asks for David Pecker's cell and -- or, actually, you ask for David Pecker's cell and say, "I have it but he thinks it's wrong." And then he, I imagine, provides the cell phone number. And you say, "Same one! Thanks!" And Michael Cohen says, "He called me from this number this morning." And then you say, "They spoke. All good!" Or, it's "The spoke," but I imagine you meant "they."

Do you recall who "they" was?

A The President and David Pecker.

Q Do you recall what they discussed during that call?

A No.

Q So how did you know to say "all good"?

A I was referring to the fact that we didn't need to search for a phone number, that I was all set. They spoke and we were good.

Q Okay.

Does any of my counsel at any table have any followups?

Mr. Collins. Reclaiming my time.

After almost 8 hours, and over the last 2 hours of which, especially among many questions were repetitive, not just in content but actual word and verse on many of these questions, I think this is something that we will take up in the next, you

know -- hopefully not, but in negotiations. This was, frankly -- I want to put it on the record -- a waste of time, the last part. Members, understandably -- I am one, so we do like our 5 minutes to question, but it was, unfortunately, a very much repetitive situation.

In light of everything and the fact we've gone through -- and also forcibly reading documents, the question I have is, the majority, through this witness, are we expecting another call from a woman who has testified now three times before Congress and been a part of this and also went through numerous documents? Is the counsel for the majority willing to make a statement about that?

Mr. Eisen. Mr. Collins, we heard a large number of absolute immunity claims that not only the majority believes are unfounded but that the United States District Court for the District of Columbia has rejected on absolute immunity. The necessity to put that on the record stems from the assertion of those claims.

We appreciate the White House willingness to continue conversations on this matter, but we feel very strongly that but for the assertion of absolute immunity we would have been able to avoid the necessary creation of a record. So that has a contributed to the situation in which we find ourselves.

I will note that the White House has expressed -- that's another reason we need the transcript, is the White House has expressed a willingness to review the questions that are asked, the objection. We've tried to create a complete transcript for

that purpose.

I think Mr. Collins knows better than I do the exigencies of having Members who do want to have the firsthand, percipient testimony and dealing with the challenges of votes.

If the minority will indulge us, I do think -- I see some restless movement from our witness.

Ms. Hicks. No. Sorry. I --

Mr. Eisen. No. No. You're entitled.

And I would like to excuse the witness so she can make her flight.

Mr. Collins. At this point, I appreciate that. I will not have an objection that she will be excused.

I will note that your long and eloquent conversation we just now had absolutely nothing to do with my answer -- that the question was actually answered. I appreciate no one actually discussing -- Ms. Hicks, I have no problem --

Ms. Hicks. I'm happy to stick around if we're going to resolve the answer to that question.

Mr. Collins. Yeah. I mean, I think the interesting issue is, again, not -- I have no -- and we've had to go back and forth on this concerning the foundation of the opinion from the White House. That was never the question I asked, and it was never the concern that I had about multiple questions. You did attempt, at least toward the end, to make a head nod toward that.

My question was, and you did not answer it, are you through

with this witness, not just today but in the future? What is the plans of this committee?

Mr. Eisen. The next step is to engage in an accommodation process on the many, many, many questions in the record that we believe absolute immunity was -- we respectfully disagreed with the view of absolute immunity. It is, in our view and the view of the courts, we believe, unfounded. And then we will make an assessment of next steps.

I appreciate the recognition of my gesture. I thought it was not just a head nod but a full-body move towards expediting.

And I want to express my appreciation to the witness, to her counsel, and to the White House lawyers also for -- as we sped through, I think we covered Volume II of the Mueller report in record time.

And, of course, the minority was on our call, the accommodations call, yesterday, and we'll continue to be a part of that. And we'll try to proceed with all due courtesy to everyone.

We're very appreciative of you being here, Ms. Hicks.

Mr. Philbin. If we could make one observation in response to the ranking member's comments also and to Mr. Eisen's comments, the usual process -- and it would've been much more -- the usual process -- and it would've been much more respectful to Ms. Hicks' time -- is to talk about accommodations and engage in negotiations before a subpoena is issued. And that would've avoided the need to have this hearing today under subpoena and then try to go about

the process as it's usually handled.

Mr. Collins. But reclaiming my time, that is not what this majority wants. They prefer the subpoena-first approach. And they can roll their eyes and sigh, but that's exactly what happened. As proven earlier today when I asked about ones who never were responsive to any of your requests and they've never been subpoenaed.

I want to go back to this quick, and I'm going to solve this so you can get home. Two questions, straightforward: Are you through with her or not? And number two is, when will the transcript be available? That's all I'm asking.

Mr. Eisen. We've asked that the transcript be made available -- to take the easy one first -- with all deliberate speed.

And that really goes to the answer to number one. We're now going to engage in an accommodation process, including whether we can get answers to some of these questions, and that will determine next steps here.

I do take strong exception to the White House's characterization of the accommodation efforts. I think there's a long trail of letters, unilateral offers on our part. But we're engaged in it. We're going to proceed with it.

We're very grateful to the witness for being here today. And with that, I'd like to release her, with the permission of the ranking member.



Mr. Collins. Well, seeing that I did not still get an answer, I'll take that as a no. I'll have to talk to the chairman, who will decide this. But it is interesting that you will not answer the question whether you were through with her not just today but in the future. We'll get the transcript as soon as possible. Again, accommodations is something we can talk about at another time.

Mr. Eisen. Thank you, Ms. Hicks. And we want to thank your counsel as well.

Ms. Hicks. Thank you very much.

[Whereupon, at 4:52 p.m., the interview was concluded.]

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit FF**

THE WHITE HOUSE

WASHINGTON

July 5, 2019

Sandra Moser, Esq.  
Quinn Emanuel Urquhart & Sullivan, LLP  
1300 I Street NW, Suite 900  
Washington, D.C. 20005

Dear Ms. Moser:

I write in reference to written questions that your client, Annie Donaldson Talley, received from the Committee on the Judiciary of the United States House of Representatives (the “Committee”) on June 26, 2019, pursuant to a subpoena issued to you by the Committee on May 21, 2019.

Upon review of the questions, we believe that the questions listed below would call for responses that implicate constitutionally-based Executive Branch confidentiality interests. Accordingly, the White House directs Ms. Talley not to provide substantive responses to the following questions.

- 12.d, e., i., j.
- 13.b, c., d., e., f., g., h.
- 14.a., c., d.
- 15.a., b., c., d., e.
- 16.b., c.
- 17.a. (If yes, . . . .”)<sup>1</sup>, b., c., d., e., f., g., h.
- 18.a., b., c.
- 19.b., c., d., e., f.
- 20.a., b., c., d., e., f., g., h.
- 21.b.
- 22.a, b., c.
- 23.a., b.
- 24.
- 25.b., c.
- 26.b., c., d.
- 27.b., c.
- 28.a., b., c., d., e., f.
- 29.a., b., c., d., e., f., g., h.
- 30.b., f., g., h.

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<sup>1</sup> Portion of question quoted would call for a response that implicates constitutionally-based Executive Branch confidentiality interests and therefore should not be answered.

Sandra Moser, Esq.

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- 31.b., c., d.
- 32.b.
- 33.b.
- 34.b., c., d.
- 35.a., c., d., e., f., g.
- 36.c.
- 37.b., c., d.
- 38.b., c.
- 39.b., c.
- 40.b., f., g., h., i., j., k., l., m., n., o.
- 41.b., c., d., e.
- 42.b. (“If yes, . . . .”), c. (“If yes, . . . .”), d.
- 43.c.
- 44.
- 45.
- 46.a., b., c., d., e., f.
- 47.
- 48.
- 49.c., d.
- 50. (“If yes, . . . .”), b., d., f., h.
- 51.a., b., c., d., e., g., h., i.
- 52.a., b., d., e., f.
- 53.a., b.
- 54.a., b., c.
- 55.b., c.
- 56.c., e.
- 57.b., c., d.
- 58.a., b., c.
- 59.b., c.
- 60.b., c.
- 61.b.
- 62.a., b., c., d., e.
- 63.a., b., c., d., e.
- 64.a., b., c., d.
- 65.a., b., c., d.
- 66.c., d., e., f.
- 67.a., b., c., d., e., f., g.
- 68.a., b., c.
- 69.
- 70.a., b.
- 71.b, c., d., e.
- 75.b., c., d., e.
- 76.a. (“If yes, . . . .”), b.
- 77.b, c.

Sandra Moser, Esq.

Page 3

- 78.a. ("If yes, . . . ."), b.
- 79.b, c.
- 80.a. ("If yes, . . . ."), b.
- 81.b.
- 83.a.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael M. Purpura". The signature is fluid and cursive, with the first name "Michael" and last name "Purpura" clearly distinguishable.

Michael M. Purpura  
*Deputy Counsel to the President*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit GG**

**U.S. House of Representatives**  
**Committee on the Judiciary**

Washington, DC 20515-6216  
One Hundred Sixteenth Congress

May 20, 2019

Donald F. McGahn II, Esq.  
c/o William A. Burck, Esq.  
Quinn Emanuel Urquhart & Sullivan  
1300 I St. NW  
Suite 9000  
Washington, D.C. 20005

Dear Mr. McGahn:

As you know, your presence is required tomorrow morning for a hearing before the Committee on the Judiciary pursuant to a subpoena compelling your testimony.<sup>1</sup> This afternoon, White House Counsel Pat Cipollone informed me that President Trump has ordered you not to testify.<sup>2</sup> President Trump's order—which seeks to block a former official from informing a coequal branch of government about his own misconduct—is unprecedented and, contrary to the letter received from your counsel this evening, does not excuse your obligation to appear before the Committee.

*First*, although the Justice Department's Office of Legal Counsel (OLC) has produced an opinion purporting to excuse you from testifying, that opinion has no support in relevant case law, and its arguments have been flatly rejected by the courts. As Judge Bates previously explained, the notion that a former White House Counsel is "absolutely immune" from a congressional subpoena has been "virtually foreclosed by the Supreme Court," which held several decades ago that senior White House aides do not enjoy such immunity even from civil damages suits.<sup>3</sup> OLC's most recent opinion—which relies almost entirely on its own prior opinions—offers no persuasive reasoning for distinguishing Judge Bates's ruling or relevant Supreme Court case law.<sup>4</sup>

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<sup>1</sup> Subpoena by Authority of the House of Representatives of the United States of America to Donald F. McGahn for documents and testimony, signed by Representative Jerrold Nadler, April 22, 2019.

<sup>2</sup> Letter to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary from Pat Cipollone, White House Counsel (May 20, 2019).

<sup>3</sup> *Comm. on the Judiciary, U.S. House of Reps. v. Miers*, 558 F. Supp. 2d 53, 100 (D.D.C. 2008) (citing *Harlow v. Fitzgerald*, 457 U.S. 800 (1982)).

<sup>4</sup> See Steven A. Engel, Assistant Attorney General, Office of Legal Counsel, *Testimonial Immunity Before Congress of the Former Counsel to the President* (May 20, 2019) ("Engel Op.").

*Second*, the Justice Department’s own longstanding policy is that “executive privilege. . . should not be invoked to conceal evidence of wrongdoing or criminality on the part of executive officers.”<sup>5</sup> Tellingly, the Department’s opinion ignores that policy entirely. Yet as I have already made clear, the Committee plans to ask you about instances in which the President took actions or ordered you to take actions that may constitute criminal offenses, including obstruction of justice. Despite the Department’s apparent efforts to catalogue every instance in which a White House aide has refused to testify before Congress, the Department can cite no example where Congress planned to ask that White House aide about possible crimes committed by the President. Perhaps that is because—until now—no President would have engaged in such a transparent effort to block his own former aides from testifying about the President’s misconduct.

*Third*, in addition to the President not asserting executive privilege with respect to your account of the relevant events that was published in the Special Counsel’s report, the President himself has already called your credibility into question. He tweeted less than 10 days ago that he “was NOT going to fire Bob Mueller,” denying a central event that you described to Special Counsel Mueller under penalty of felony. At the same time, he has asked you to state publicly that he did not engage in obstruction of justice.<sup>6</sup> In attacking your credibility and asking you to make public comments about these events, the President has not only further waived any possible privilege with regard to your testimony; he has also created substantial concerns about acts of witness intimidation and further obstruction of Congress’s ongoing investigations. Because these incidents post-date your service as White House Counsel and occurred while you were a private citizen, the Committee is plainly entitled to ask you about them without raising even potential privilege issues.

*Fourth*, nowhere in OLC’s 15-page opinion or in Mr. Cipollone’s letter to me is there mention of President Trump actually invoking executive privilege. OLC’s opinion deals exclusively with your purported “immunity” from testimony and concludes (erroneously) that you are “not legally required to appear and testify.”<sup>7</sup> Mr. Cipollone’s letter to me reiterates that conclusion and states that “the President has directed Mr. McGahn not to appear” at tomorrow’s hearing.<sup>8</sup> But—in marked contrast to the letter sent by the White House to former White House Counsel Harriet Miers (which itself was rejected as improper by the court)—Mr. Cipollone’s

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<sup>5</sup> Robert B. Shanks, *Congressional Subpoenas of Department of Justice Investigative Files*, 8 Op. O.L.C. 252, 267 (1984).

<sup>6</sup> Michael S. Schmidt, *White House Asked McGahn to Declare Trump Never Obstructed Justice*, N.Y. Times, May 10, 2019.

<sup>7</sup> Engel Op. at 15.

<sup>8</sup> Letter to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary from Pat Cipollone, White House Counsel (May 20, 2019).




letter does not state that President Trump has asserted executive privilege with respect to your testimony, nor could he.<sup>9</sup> At most, the Department's conclusions regarding your "immunity" (even if accepted as correct, which they are not) mean that the decision whether to comply with the Committee's lawful subpoena rests solely in your hands.

*Fifth*, contrary to the reference in your counsel's letter, there has been no suggestion by President Trump or by anyone speaking on his behalf that attorney-client privilege poses an obstacle to your testimony. In fact, any invocation of attorney-client privilege in these circumstances is foreclosed by the D.C. Circuit case law, which makes clear that the privilege is inapplicable with respect to White House attorneys where the investigation relates to criminal wrongdoing.<sup>10</sup>

Finally, the Justice Department has no place informing you about the potential remedies that Congress may pursue in the exercise of its own Article I powers.<sup>11</sup> The Committee has made clear that you risk serious consequences if you do not appear tomorrow. As the district court already held with respect to Ms. Miers, you are "not excused from compliance with the Committee's subpoena by virtue of a claim of executive privilege that may ultimately be made."<sup>12</sup> Instead, you "must appear before the Committee to provide testimony, and invoke executive privilege where appropriate."<sup>13</sup> Should you fail to do so, the Committee is prepared to use all enforcement mechanisms at its disposal.

Sincerely,

  
\_\_\_\_\_  
Jerrold Nadler  
Chairman  
House Committee on the Judiciary

cc: The Hon. Doug Collins  
Ranking Member, House Committee on the Judiciary

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<sup>9</sup> See Letter to George T. Manning, Esq. from Fred F. Fielding, Counsel to the President (July 9, 2007), attached as Exhibit 20 in *Miers*, No. 08-409, 558 F. Supp. 2d 53 (D.D.C.); see also *Miers*, 558 F. Supp. 2d at 62 (White House Counsel informed Miers that President Bush "had decided to assert executive privilege over the substance of Ms. Miers's testimony").

<sup>10</sup> *In re Lindsey*, 158 F.3d 1263, 1271-78 (D.C. Cir. 1998).

<sup>11</sup> See Engel Op. at 15

<sup>12</sup> *Miers*, 558 F. Supp. 2d at 106.

<sup>13</sup> *Id.*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit HH**

**quinn emanuel trial lawyers | washington, dc**

1300 I Street NW, Suite 900, Washington, District of Columbia 20005-3314 | TEL (202) 538-8000 FAX (202) 538-8100

WRITER'S DIRECT DIAL NO.  
**(202) 538-8333**

WRITER'S EMAIL ADDRESS  
**sandramoser@quinnemanuel.com**

July 5, 2019

**VIA E-MAIL**

The Honorable Jerrold Nadler  
Chairman  
United States House of Representatives  
Committee on the Judiciary  
Washington, DC 20515-6216  
HJUD.Correspondence@mail.house.gov

Re: Written Questions for Ann Donaldson

Dear Chairman Nadler,

Pursuant the agreement between the United States House of Representatives, Committee on the Judiciary, and my client Ann Donaldson, reached in connection with the Committee's subpoena for her to appear for a deposition, enclosed please find Ms. Donaldson's written responses to the written questions received from Counsel to the Majority Staff of the Committee on June 27, 2019.

Also enclosed is a letter from Michael M. Purpura, the current Deputy White House Counsel to the President of the United States, confirming that the White House has directed Ms. Donaldson to refrain from providing substantive responses to certain questions. As agreed to by the Committee, the White House has objected on a question-by-question basis, as if Ms. Donaldson had appeared in person.

Sincerely,



Sandra L. Moser

**quinn emanuel urquhart & sullivan, llp**

LOS ANGELES | NEW YORK | SAN FRANCISCO | SILICON VALLEY | CHICAGO | WASHINGTON, DC | HOUSTON | SEATTLE | BOSTON | SALT LAKE CITY  
LONDON | TOKYO | MANNHEIM | HAMBURG | PARIS | MUNICH | SYDNEY | HONG KONG | BRUSSELS | ZURICH | SHANGHAI | PERTH | STUTTGART

Enclosures

cc: The Honorable Doug Collins, Ranking Member  
Barry H. Berke, Esq., Counsel to the Majority Staff  
Michael M. Purpura, Esq., Deputy White House Counsel to the President

**Responses by Ann Donaldson  
To Questions from  
Committee on the Judiciary of the U.S. House of Representatives**

**July 5, 2019**

1. Describe the process of how you were hired to work on the Donald J. Trump for President campaign (the “Trump Campaign”).

**RESPONSE:** I was never hired to work on the Trump Campaign. Rather, I was an associate at Jones Day and, in that capacity, provided legal services to the Trump Campaign as a client of Jones Day.

2. Did you meet then-candidate Trump prior to joining the Trump Campaign? When did you first meet then-candidate Trump and under what circumstances?

**RESPONSE:** See Response to Question 1.

I first met then-candidate Donald Trump at the Republican National Convention in Cleveland, Ohio while he was completing paperwork to access the ballot in various states as the Republican nominee for President of the United States.

3. Confirm the dates during which you worked for the Trump Campaign.

**RESPONSE:** See Response to Question 1.

4. List all job titles you held for the Trump Campaign.

**RESPONSE:** See Response to Question 1.

5. Confirm the dates you worked at the White House.

**RESPONSE:** January 20, 2017 – December 21, 2018

6. List all job titles you held while at the White House and the corresponding dates of each job title held.

**RESPONSE:** Deputy Assistant to the President, Special Counsel to the President and Chief of Staff to the White House Counsel, January 20, 2017 – February 22, 2018

Deputy Assistant to the President, Deputy Counsel to the President and Chief of Staff to the White House Counsel, February 22, 2018 – August 5, 2018

Deputy Assistant to the President and Deputy Counsel to the President, August 5, 2018 – December 21, 2018

7. Describe the process of how you were hired for the job of chief of staff for Don McGahn?

**RESPONSE:** After discussing joining the Office of the White House Counsel with Mr. McGahn—while still an associate at Jones Day—I subsequently was hired to work for the Executive Office of the President as Deputy Assistant to the President, Special Counsel to the President, and Chief of Staff to the White House Counsel. I participated in a background check and onboarding process for White House staff during the Transition.

8. Did you know Mr. McGahn prior to speaking with him about the position of his chief of staff?

**RESPONSE:** Yes.

9. Describe your job responsibilities as chief of staff for Mr. McGahn.

**RESPONSE:** My responsibilities as Deputy Assistant to the President, Special Counsel to the President, and then Deputy Counsel to the President, and Chief of Staff to the White House Counsel varied as circumstances warranted over time. It is not possible to parse out which duties necessarily corresponded with to the “Chief of Staff to the White House Counsel” portion of the title versus the others.

In general terms, my responsibilities included handling a portfolio of legal issues and other matters for the Counsel’s Office, providing advice regarding operational and administrative functions of the White House and various other matters, interfacing with various White House staff, and regularly participating in senior level decision-making on a wide range of issues. In addition, I was responsible for managing day-to-day functions of the Counsel’s Office, which included, but was not limited to interfacing with White House Counsel’s Office staff, coordinating among the various deputies, managing information flow, preparing advice for the President, and advising and assisting Mr. McGahn in his execution of duties of the White House Counsel. Regularly, this also involved sitting in on meetings or calls involving Mr. McGahn or appearing on his behalf if he was not available to attend.

10. Describe where your office was located relative to that of Mr. McGahn.

**RESPONSE:** My office was located on the second floor in the West Wing, in the suite traditionally assigned to the White House Counsel. At times, I occupied an office across from the White House Counsel’s Office reception area outside Mr. McGahn’s office, then the office immediately adjacent to Mr. McGahn’s.

11. Identify the approximate number of times you met directly with President Trump, either alone or with others, during your tenure at the White House Counsel’s office.

**RESPONSE:** I was in meetings directly with President Trump fewer than ten times.

12. Special Counsel Mueller's Report on the Investigation Into Russian Interference In the *2016 Presidential Election* (hereinafter "the Mueller Report" or "the Report")<sup>1</sup> references a set of notes that you maintained during your tenure as chief of staff to Mr. McGahn. The Bates Number prefix for these notes is SC\_AD\_0000.

- a. When did you first decide to take these notes and do you recall the first date on which you took notes?

**RESPONSE:** It has been my longstanding practice to take notes attendant to my professional responsibilities, which often require me to handle multiple substantive issues within a day.

Consistent with my regular practice, the first date on which I made any handwritten notes during my time at the White House would have been January 20, 2017.

- b. Describe the purpose for which you maintained these notes.

**RESPONSE:** See Response to Question 12a.

- c. Describe your criteria for deciding which discussions or events to record in your notes.

**RESPONSE:** There were no criteria as to which discussions or events were the subject of my handwritten notes (which were not "recordings")<sup>2</sup>; it was my regular practice to take notes attendant to my professional responsibilities.

- d. Did Mr. McGahn or anyone else ask you to take notes at any point? If yes, describe those discussions.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

---

<sup>1</sup> Unless otherwise indicated, all references to the Report are to Volume II of the Report.

<sup>2</sup> Throughout the Committee's questions, there are sporadic references to my notes as "recordings." I would not characterize my handwritten notes as "recordings" or akin to transcripts of events or discussions that took place during my time in the White House, but rather as running working notes. In order to provide answers to questions referencing "recordings," I have responded as if the question had instead asked about my handwritten notes.

- e. Did President Trump or anyone else ever ask you not to take notes of any discussions or events? If yes, describe those discussions or events.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- f. Did you ever decide not to take notes because of the subject matter of the discussions or nature of the events? If yes, describe those circumstances.

**RESPONSE:** I never refrained from taking handwritten notes as to specific discussions or events, see Response to Question 12c, though starting in or around May 2017, I made an effort to write notes that were more succinct and precise in nature.

- g. Did you always make your notes contemporaneous to the discussions or events you were documenting? If not, describe how and when you created your notes.

**RESPONSE:** No. At times, I made notes following a discussion or event, after I had considered an issue, or to ensure that I remembered an idea I had, an item to-do, or something that required follow-up.

- h. Describe whether your notes were handwritten, typed or both..

**RESPONSE:** Handwritten.

- i. Identify each individual with whom you shared your notes or copies of your notes and the related circumstances, including whether you were asked to provide the notes, which notes you provided and when you provided those notes.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- j. When you left the White House, did anyone discuss with you retaining your notes? If so, describe with whom you had such discussions and the nature of those conversations.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- k. Did you retain your notes or copies of your notes when you left the White House?

**RESPONSE:** Yes.

- l. Did anyone from the White House, Department of Justice, or anyone else provide you and/or your counsel with copies of your notes after you left the White House?



If so, describe any particular terms or conditions under which those copies were provided to you.

**RESPONSE:** No.

- m. Do you or your counsel currently have your notes or copies of your notes from the White House? If so, describe how you received those notes.

**RESPONSE:** See Response to Question 12(k).

13. Page 49 of the Mueller Report indicates that on March 2, 2017 when President Trump became aware that former Attorney General Sessions was considering recusing himself from the Russia investigation, “the President called McGahn and urged him to contact Sessions to tell him not to recuse himself from the Russia investigation.”

- a. Were you with Mr. McGahn when the President called him on that date?

**RESPONSE:** I do not, today, have an independent recollection of whether or not I was with Mr. McGahn at the time of the cited telephone call.<sup>3</sup>

- b. If so, describe what occurred on that call.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Did you discuss that call subsequently with Mr. McGahn?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

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<sup>3</sup> It bears noting that more than two years have passed since the events in question, and more than 18 months since the time I was first questioned about such events. While at times I was a direct participant in certain meetings or telephone calls, at other times my knowledge of certain events may have been acquired indirectly. Therefore I do not, today, have an independent recollection of the bases for my knowledge as to certain events that are the subject of these questions. My voluntary statements to the Special Counsel’s Office likely reflect a firmer recollection given the closer proximity in time to the events; however, I am not in possession of any documents memorializing the voluntary statements I made to the Special Counsel’s Office when interviewed about these events, and I have not re-reviewed my handwritten notes that were provided to the Special Counsel’s Office in responding to the Committee’s questions.

- d. If yes, describe those discussions.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- e. Were you ever with Mr. McGahn on any other date when the President discussed Mr. Sessions' recusal from the Russia investigation?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- f. If so, describe each such occurrence.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- g. Did the President or anyone else ever call you and ask you to contact Mr. Sessions regarding his recusal and/or the Russia investigation?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- h. If so, describe each such occurrence.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

14. Page 49 of the Report states that "McGahn understood the President to be concerned that a recusal would make Mr. Sessions look guilty for omitting details in his confirmation hearing; leave the President unprotected from an investigation that could hobble the presidency and derail his policy objectives; and detract from favorable press coverage of a Presidential Address to Congress the President had delivered earlier in the week."

- a. Did you share Mr. McGahn's understanding of the President's concerns regarding Mr. Sessions' recusal?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- b. Were you present for any discussions involving the President about his concerns regarding Mr. Sessions' recusal? If yes, describe those discussions.

**RESPONSE:** I was not involved in any direct discussions with the President about Mr. Sessions' recusal.

- c. Did you discuss Mr. McGahn's understanding of the President's concerns regarding Mr. Sessions' recusal with Mr. McGahn? If yes, describe those discussions.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- d. Did you discuss Mr. McGahn's understanding of the President's concerns regarding Mr. Sessions' recusal with anyone other than Mr. McGahn? If yes, describe those discussions and who was present for each discussion.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

15. Footnote 279 on page 49 of the Mueller Report references an entry in your notes (SC\_AD\_00123) stating, "just in the middle of another Russia Fiasco." The footnote cites back to a discussion on March 2, 2017 between the President and Mr. McGahn, during which "McGahn understood the President to be concerned that a recusal would make Sessions look guilty for omitting details in his confirmation hearing; leave the President unprotected from an investigation that could hobble the presidency and derail his policy objectives; and detract from favorable press coverage of a Presidential Address to Congress the President had delivered earlier in the week."

- a. Describe what you are referring to in this entry stating "just in the middle of another Russia Fiasco."

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel's Office's quotation of my handwritten notes.

I affirm the accuracy of the voluntary statements I made when being interviewed by the Special Counsel's Office. See footnote 3.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- b. How did you learn about the events you describe as “another Russia fiasco?”

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Why did you use the term “fiasco” to describe what you observed?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- d. Your notes say it was “*another* Russia fiasco;” what other discussions or events are you referring to as also qualifying as a “Russia fiasco?”

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- e. If this entry described on SC\_AD\_00123 was based on discussions or events for which you were present, identify any additional persons present.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

16. Page 49 of the Mueller Report indicates that Mr. McGahn reached out to Mr. Sessions on March 2, 2017 and reported that the President was not happy about the possibility of Mr. Sessions’ recusal.

- a. Were you present when Mr. McGahn had this discussion with Mr. Sessions?

**RESPONSE:** It is possible, but I do not, today, have an independent recollection of whether or not I was with Mr. McGahn at the time of the cited discussion.

- b. If yes, describe what was said and who else, if anyone, was present for those discussions.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Did Mr. McGahn discuss this conversation with Mr. Sessions with you? If yes, describe your discussions with Mr. McGahn.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

17. Page 49 of the Mueller Report describes Mr. McGahn's efforts on March 2, 2017 "on behalf of the President to avert Sessions' recusal by speaking to Sessions' personal counsel, Sessions' chief of staff, and Senate Majority Leader Mitch McConnell, and by contacting Sessions himself two more times." The accompanying citation (footnote 283) references an entry in your notes (SC\_AD\_00121).

- a. Did you personally observe or hear any or all of Mr. McGahn's efforts as described on page 49 of the Report? If yes, describe what you observed or heard.

**RESPONSE:** Yes.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- b. Did Mr. McGahn discuss with you any of his efforts described on page 49 of the Report? If yes, describe those discussions.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Why did Mr. McGahn speak to Senate Majority Leader Mitch McConnell?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- d. Describe the substance of Mr. McGahn's conversation with Senate Majority Leader Mitch McConnell as it related to efforts on behalf of the President to avert Mr. Sessions' recusal.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- e. Describe the substance of Mr. McGahn's conversation with Mr. Sessions' personal counsel as it related to efforts on behalf of the President to avert Mr. Sessions' recusal.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- f. Describe the substance of Mr. McGahn's conversation with Mr. Sessions's chief of staff as it related to efforts on behalf of the President to avert Mr. Sessions' recusal.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- g. Were you present for any other discussions with Mr. Sessions about his recusal?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- h. If yes, describe those discussions and who else was present.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

18. The Report, on pages 49 and 50, states that on the afternoon of March 2, 2017, Mr. Sessions announced his decision to recuse "from any existing or future investigations of any matters related in any way to the campaigns for President of the United States. Sessions believed the decision to recuse was not a close call, given the applicable language in the Code of Federal Regulations (CFR)."

- a. Did you agree with Mr. Sessions' decision?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- b. Did you discuss that decision with Mr. McGahn?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. If yes, describe those discussions.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

19. Page 50 of the Report states that on March 2, 2017, "[s]hortly after Sessions announced his recusal, the White House Counsel's office directed that Sessions should not be contacted about the matter."

- a. Is this statement accurate?

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel's Office's quotation of my handwritten notes or its description of the voluntary statements I made to it, although I do not have access to its records of my statements.

- b. Was that directive conveyed to the President? If so, who conveyed that direction, what exactly was said, and who else was present for those conversations?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Was that directive conveyed to anyone else? If so, whom?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- d. Did you ever witness the President contacting Mr. Sessions about the matter, directly or indirectly? If so, describe what you witnessed.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- e. Did you ever learn that this directive was violated by the President seeking to contact Mr. Sessions about the matter, directly or indirectly? If so, what did you learn?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- f. Did you ever discuss with Mr. McGahn or anyone else any efforts by the President to contact Mr. Sessions, directly or indirectly, about the Russia investigation or his recusal? If yes, describe those discussions.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

20. Footnotes 289 and 290 on page 50 of the Report reference entries in your notes (SC\_AD\_00123) from March 2, 2017 stating, "No contact w/Sessions" and "No comms/Serious concerns about obstruction."

- a. Who made those statements?

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel's Office's quotation of my handwritten notes.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- b. Describe the discussions reflected in those notes and the individuals present for those discussions.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Did you participate in any discussions in which personnel in the White House Counsel's office expressed "serious concerns" about obstruction? If yes, describe all of those discussions and who was present for those discussions.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- d. Identify all individuals who expressed "serious concerns about obstruction" during those meetings.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- e. Describe the concerns that were expressed about obstruction.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- f. Did those "serious concerns about obstruction" relate to the President's conduct?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.



- g. Did you have “serious concerns about obstruction” based on the President’s conduct?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- h. Can you recall any other occasion when members of the White House Counsel’s office expressed concerns about obstruction by the President or other members of the White House staff?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

21. Page 50 of the Report states that on March 3, 2017, Mr. McGahn was called into the Oval Office where the President “expressed anger at Mr. McGahn” for not fighting for him and compared him unfavorably to the President’s former lawyer, Roy Cohn.

- a. Were you present for that meeting on March 3, 2017? If so, does the Report accurately describe what was said at the meeting?

**RESPONSE:** No, I was not present.

- b. Did you speak with Mr. McGahn about the above discussions that occurred when he went to the Oval Office that day? If yes, describe those conversations.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

22. Page 51 of the Report states that during the weekend of March 3–5, 2017, Mr. Sessions and Mr. McGahn flew to Mar-a-Lago to meet with the President and the President attempted to get Mr. Sessions to “unrecuse” from the Russia investigation?

- a. Did you speak with Mr. McGahn about the President’s attempts to get Mr. Sessions to “unrecuse” from the Russia investigation? If yes, what did Mr. McGahn tell you?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- b. Did Mr. McGahn ever tell you that he thought it was improper for the President to try to persuade Mr. Sessions to unrecuse himself? If yes, why did he feel that way?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Did you believe it was improper for the President to try to persuade Mr. Sessions to unrecuse himself? If yes, why did you feel that way?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

23. Page 107 of the Report states that at some point in the spring of 2017, the President again sought to have Mr. Sessions reverse his recusal: “the President called [Attorney General Sessions] at home and asked if Sessions would “unrecuse” himself.”

- a. At some point, were you made aware that the President did this? If yes, describe how and when you learned of the President’s actions.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- b. Describe any other discussions you had regarding the President’s attempts to persuade Mr. Sessions to unrecuse himself.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

24. Did you believe the President’s efforts to pressure Mr. Sessions to: (1) ignore ethical guidelines and maintain control over the Russia investigation and then (2) reverse his decision to recuse himself involved potentially criminal conduct or were otherwise improper? If yes, why?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

25. Page 31 of the Report states that on January 26th, 2017, the Justice Department informed Mr. McGahn that there was evidence that Michael Flynn may have made false statements about his contacts with Russian officials during the campaign.

- a. Were you present when the Justice Department informed Mr. McGahn about Michael Flynn's statements about his contacts with Russian officials? If so, what was said?

**RESPONSE:** No, I was not present.

- b. Did Mr. McGahn inform the President? If so, what did he say when he spoke to the President?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Did Mr. McGahn inform the President that Flynn's statements violated or may have violated a federal statute? If so, what did he say in that regard?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

26. Page 38 of the Mueller Report states: "Talking points on [Michael Flynn's] resignation prepared by the White House Counsel's office and distributed to the White House communications team stated that McGahn had advised the President that Flynn was unlikely to be prosecuted, and the President had determined that the issue with Flynn was one of trust."

- a. Is this statement accurate?

**RESPONSE:** Although I recall that talking points related to General Flynn's resignation were prepared, I do not, today, have an independent recollection of to whom they were distributed or the specific substance of the talking points.

- b. Did you participate in drafting the talking points?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Did you believe the referenced talking points regarding the Flynn resignation were accurate?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- d. Identify all other individuals involved in drafting the talking points.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- e. Identify all individuals who were given a copy of the talking points, including any investigators.

**RESPONSE:** See Response to Question 26a.

- f. Describe the substance of the talking points.

**RESPONSE:** See Response to Question 26a.

- 27. Citing to your notes at Bates Number SC\_AD\_000137, page 51 of the Report states that “[o]n March 5, 2017, the White House Counsel’s office was informed that the FBI was asking for transition-period records relating to Flynn—indicating that the FBI was still actively investigating him.”

- a. Does this statement accurately reflect your recollection?

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel’s Office’s description of my handwritten notes or my voluntary statements to it, although I do not have access to its records of my statements.

- b. Describe what if any knowledge you have about the FBI’s requests for transition-period records relating to Michael Flynn.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Between the dates of March 5 and May 9, 2017, did you speak with Mr. McGahn about the FBI investigation into Michael Flynn? If yes, describe those discussions.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- d. Between the dates of March 5 and May 9, 2017, were you present for any conversations in which the President discussed the FBI investigation into Michael Flynn? If yes, describe those discussions.

**RESPONSE:** I was not physically present for any in-person meetings with the President where the FBI investigation into Michael Flynn was discussed. It is possible I was present for telephone conversations in which the President may

have discussed with Mr. McGahn or others the FBI investigation into Michael Flynn.

28. Page 51-52 of the Report states that on March 5, 2017, President Trump “told advisors he wanted to call the Acting Attorney General [Dana Boente] to find out whether the White House or the President was being investigated.” The accompanying citation (footnote 306) cites to an entry in your notes, Bates Number SC\_AD\_000168, stating “POTUS wants to call Dana/Is investigation/No/We know something on Flynn/GSA got contacted by FBI/There’s something hot.”

- a. Describe the meaning of this entry.

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel’s Office’s quotation of my handwritten notes.

I affirm the accuracy of the voluntary statements I made when being interviewed by the Special Counsel’s Office. See footnote 3.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- b. Describe what discussions or events are being recorded here.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Whose words were you recording in Footnote 306?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- d. Who else was present when those words were stated?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- e. Describe why the President “want[ed] to call Dana.”

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- f. Did the President or anyone acting on his behalf call Mr. Boente?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

29. Page 52 of the Report quotes an entry in your notes (footnote 308, Bates Number SC\_AD\_00188) which states: “POTUS in panic/chaos . . . . Need binders to put in front of POTUS. (1) All things related to Russia.”

- a. Describe the meaning of this entry.

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel’s Office’s quotation of my handwritten notes or its description of the voluntary statements I made to it, although I do not have access to its records of my statements.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- b. Describe what discussions or events are being recorded here.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Why was the President in “panic/chaos”?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- d. How did you learn that the President was in “panic/chaos”?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- e. Was anyone present when that was said?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- f. What binders were to be put in front of the President and for what purpose?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- g. What does the entry “[a]ll things related to Russia” mean?

**RESPONSE:** See Response to Question 29a.

- h. Were there any other items listed after (1) on that entry?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

30. Page 52 of the Report indicates that the week after Mr. Comey briefed congressional leaders “about the FBI’s investigation of Russian interference, including the identification of the principal U.S. subjects of the investigation” on March 9, 2017, one of the leaders briefed, Senate Select Committee on Intelligence Chairman Senator Richard Burr, was in contact with the White House Counsel’s office, which “appears to have received information about the status of the FBI investigation.” You are quoted in Footnote 309 as saying that Senator Burr identified “4-5 targets.”

- a. Is this statement accurate?

**RESPONSE:** I was not present for Mr. Comey’s briefing to the Senate Select Committee on Intelligence, and therefore I cannot confirm whether the description of his briefing to congressional leaders is accurate.

I have no reason to question the accuracy of the Special Counsel’s Office’s quotation of “4-5 targets” from my notes.

I have no reason to question the accuracy of the Special Counsel’s Office’s description of the voluntary statements I made to it, although I do not have access to its records of my statements.

Any characterization of my voluntary statements set forth in the Report is that of the Special Counsel’s Office and may be derived, in part, from sources other than my statements.

As stated by the Special Counsel’s Office in the Report, at the time, I “believed these were targets of [the Senate Select Committee on Intelligence].”

- b. Who initiated the contact between the White House Counsel's office and Senator Burr?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Where did the March 16, 2017 briefing from Senator Burr take place?

**RESPONSE:** To the extent this question refers to contact between Senator Burr and the Office of the White House Counsel on or about March 16, 2017 (I would not characterize this contact as a formal "briefing"), that conversation took place by telephone.

- d. Why did Senator Burr provide this briefing to the White House Counsel's office about the investigation into Russian election interference?

**RESPONSE:** I do not know. I cannot speak to Senator Burr's state of mind.

- e. Were you present for Senator Burr's March 16, 2017 briefing to the White House Counsel's office?

**RESPONSE:** To the extent this question refers to a telephone call between Senator Burr and the Office of the White House Counsel on or about March 16, 2017, I was in Mr. McGahn's office during, but not a participant on, the telephone call.

- f. Who else was present?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- g. Describe the substance of Senator Burr's March 16, 2017 briefing to the White House Counsel's office.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- h. Were the contents of Senator Burr's briefing shared with the President? If so, describe who shared the contents of the meeting and if you were present for those discussions.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.



31. Page 31 of the Report indicates that Mr. McGahn asked John Eisenberg to examine potential legal issues raised by Flynn's FBI interview and his contacts with Russian ambassador Sergey Kislyak.

a. Were you present when Mr. McGahn asked Mr. Eisenberg to do this?

**RESPONSE:** I do not, today, have an independent recollection of whether or not I was present.

b. Did you discuss with Mr. McGahn his reasons for asking Mr. Eisenberg to conduct this research?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

c. Did Mr. McGahn believe that Mr. Flynn's actions involved potentially criminal conduct?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

d. Did you believe that Mr. Flynn's actions involved potentially criminal conduct?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

32. Page 32 of the Report indicates that on January 27, 2017, Mr. Eisenberg informed Mr. McGahn that there was a possibility that Flynn had violated 18 U.S.C. § 1001 and the Logan Act.

a. Were you present for this conversation? If yes, describe the substance of the conversation.

**RESPONSE:** I do not, today, have an independent recollection of whether or not I was present.

b. If you were not present, did you ever discuss the results of Mr. Eisenberg's research with Mr. McGahn? If yes, describe the substance of that conversation.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

33. Page 33 of the Report indicates that on the morning of January 27, 2017, Mr. McGahn asked Sally Yates to return to the White House to discuss Flynn again.

- a. Were you present for that meeting between Mr. McGahn and Ms. Yates? If yes, identify all individuals that participated in that meeting between Mr. McGahn and Ms. Yates and describe what was said.

**RESPONSE:** No, I was not present.

- b. Did you discuss that meeting with Mr. McGahn? If yes, describe what was discussed.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

34. Page 33 of the Report indicates that Mr. McGahn told Ms. Yates that “the White House did not want to take action that would interfere with an ongoing FBI investigation of Flynn.”

- a. Is that statement accurate?

**RESPONSE:** See Response to Question 33a. I am unable to confirm whether that statement is accurate.

- b. Did Mr. McGahn ever express that sentiment to you?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Was it your understanding at the time that the White House did not want to take action that would interfere with an ongoing FBI investigation of Michael Flynn? If yes, explain why the White House took that position.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- d. Did you ever come to understand that the President had a different view?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

35. Page 33 of the Report states that “McGahn had previously advised the President that he should not communicate directly with the Department of Justice to avoid the perception or reality of political interference in law enforcement.”

- a. Is this statement accurate?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- b. Were you present when Mr. McGahn advised the President that he should not “communicate directly with the Department of Justice to avoid the perception or reality of political interference in law enforcement?” If yes, describe those discussions.

**RESPONSE:** I was not present for any meeting between the President and Mr. McGahn concerning whether or not to “communicate directly with the Department of Justice to avoid the perception or reality of political interference in law enforcement.”

I do not, today, independently recall whether I was present for any such communication that may have occurred over the telephone.

- c. Did you discuss Mr. McGahn’s advice to the President with Mr. McGahn?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- d. If yes, describe those discussions.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- e. Did you believe that Mr. McGahn’s advice to the President was correct?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- f. Why or why not?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- g. Did President Trump follow Mr. McGahn’s advice?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

36. Page 45 of the Report indicates that Mr. McGahn told the Special Counsel that the President confirmed to Mr. McGahn that he “in fact spoke to Comey about Flynn in their one-on-one meeting.”

- a. Were you present when the President confirmed to Mr. McGahn that he “in fact spoke to Comey about Flynn in their one-on-one meeting?”

**RESPONSE:** I was not present for any in-person communication between the President and Mr. McGahn concerning whether or not the President “in fact spoke to Comey about Flynn in their one-on-one meeting.”

I do not, today, independently recall whether I was present for any such communication that may have occurred over the telephone.

- b. If yes, describe those discussions.

**RESPONSE:** See Response to Question 36a.

- c. Did you ever speak to Mr. McGahn about the President confirming to Mr. McGahn that the President “in fact spoke to Comey about Flynn in their one-on-one meeting?” If yes, describe that conversation.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

37. Page 53 of the Mueller Report states, “according to McGahn and Donaldson, the President had expressed frustration with Comey before his March 20 testimony, and the testimony made matters worse.”

- a. Is this accurate?

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel’s Office’s description of the voluntary statements I made to it, although I do not have access to its records of my statements.

Any characterization of my voluntary statements set forth in the Report is that of the Special Counsel’s Office and may be derived, in part, from sources other than my statements.

- b. Describe all conversations for which you were present in which the President expressed frustration with Mr. Comey and who if anyone else was present for those discussions.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Describe all conversations you had with Mr. McGahn regarding the President's frustration with Mr. Comey and identify any other individuals present for those discussions.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- d. Describe what President Trump said or how he reacted in response to Mr. Comey's March 20, 2017 testimony, or what anyone told you about the President's reaction that led you to believe that it "made matters worse."

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

38. Page 54 of the Report states that following Mr. Comey's March 20 testimony, "McGahn, Donaldson, and senior advisor Stephen Miller recalled that the President was upset with Comey's testimony and the press coverage that followed because of the suggestion that the President was under investigation."

- a. Does that statement accurately reflect your recollection?

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel's Office's description of the voluntary statements I made to it, although I do not have access to its records of my statements.

- b. Describe all conversations for which you were present in which the President expressed frustration about the suggestion that he was under investigation and identify any other individuals present for those conversations.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Describe all conversations you had with Mr. McGahn regarding the President's frustration about the suggestion that he was under investigation and identify any other individuals present for those conversations.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

39. Page 54 of the Report, citing to your notes at Bates Number SC\_AD\_00213, states that "notes from the White House Counsel's office dated March 21, 2018 indicate that the President was beside himself over Comey's testimony." Footnote 323 on the same page quotes your notes at Bates Number SC\_AD\_00206 as indicating the President "referred to the 'Comey Bombshell' which 'made [him] look like a fool.'"

- a. Is that account accurate?

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel's Office's quotation of my handwritten notes.

- b. Describe what you recall about the President's statements reflected in your notes.

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel's Office's quotation of my handwritten notes.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Describe what President Trump said or the manner in which he acted, or what anyone else told you about the President's reaction, that led you to conclude that he was "beside himself" over Mr. Comey's testimony?

**RESPONSE:** See Response to Question 39(b).

40. Page 54 of the Report indicates that on March 21, 2017 "[t]he President called McGahn repeatedly that day to ask him to intervene with the Department of Justice, and, according to the notes, the President was 'getting hotter and hotter, get rid?'"

- a. Is that account accurate?

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel's Office's quotation of "getting hotter and hotter, get rid" from my handwritten notes.

- b. Describe what you meant when you wrote in your notes that the President was "getting hotter and hotter, get rid?"

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel's Office's quotation of "getting hotter and hotter, get rid" from my handwritten notes.

I affirm the accuracy of the voluntary statements I made when being interviewed by the Special Counsel's Office. See footnote 3.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Does that mean the President wanted to get rid of Mr. Comey?

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel's Office's quotation of "getting hotter and hotter, get rid" from my handwritten notes. However, I cannot speak to the President's state of mind.

- d. Did you observe or hear any of the discussions between President Trump and Mr. McGahn that day?

**RESPONSE:** I do not, today, have an independent recollection of whether I directly observed or heard any discussions between the President and Mr. McGahn on March 21, 2017.

- e. If yes, what did the President say?

**RESPONSE:** See Response to Question 40d.

- f. Did you discuss with Mr. McGahn the President's calls to Mr. McGahn asking him to intervene with the Department of Justice?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- g. If yes, what did Mr. McGahn say about those calls?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- h. Describe Mr. McGahn's reaction to President Trump's repeated efforts to get Mr. McGahn to intervene with the Department of Justice.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- i. Did you discuss with anyone else the President's calls to Mr. McGahn asking him to intervene with the Department of Justice?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- j. If yes, who did you discuss it with and what did you say about those calls?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- k. How many times did President Trump contact Mr. McGahn directly or indirectly to ask that Mr. McGahn intervene with the Department of Justice?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- l. Did you observe or hear any other discussions between President Trump and Mr. McGahn in which the President asked Mr. McGahn to intervene with the Department of Justice in the Special Counsel's investigation?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- m. If so, describe those discussions and who was present.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- n. Did anyone else ever tell you about discussions between President Trump and Mr. McGahn in which the President asked Mr. McGahn to intervene with the Department of Justice in the Special Counsel's investigation?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- o. If so, describe those discussions and who was present.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

41. Page 54 of the Report states that on March 21, 2017, "[o]fficials in the White House Counsel's office became so concerned that the President would fire Comey that they began drafting a memorandum that examined whether the President needed cause to terminate the FBI director."



- a. Does this statement accurately reflect your recollection?

**RESPONSE:** Part of my and other White House Counsel's Office staff's duties included conducting legal research as to Executive powers and rendering advice on the same. These functions were job requirements, not responses to "concern[ ]".

- b. What actions did President Trump take that led officials in the White House Counsel's office to become concerned that President Trump would fire Mr. Comey?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Identify the officials in the White House Counsel's office that were concerned that President Trump would fire Mr. Comey.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- d. Describe all conversations you recall about these concerns.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- e. Did you participate in drafting the memorandum described?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- f. Do you have a copy of that memorandum?

**RESPONSE:** No.

42. Pages 54 and 55 of the Report, citing to your notes at Bates Number SC\_AD\_00210, indicate that on March 21, 2017 President Trump "sought to speak with Acting Attorney General Dana Boente directly, but McGahn told the President that Boente did not want to talk to the President about the request to intervene with Comey."

- a. Does this statement accurately reflect your recollection?

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel's Office's quotation of my handwritten notes or its description of the voluntary

statements I made to it, although I do not have access to its records of my statements.

- b. Were you present for those discussions between the President and Mr. McGahn? If yes, describe those conversations.

**RESPONSE:** I was not present for any in-person discussions between the President and Mr. McGahn on this day concerning Mr. Comey or Mr. Boente. It is possible that I was present in Mr. McGahn's office for, but not a participant in, a telephone discussion between the President and Mr. McGahn.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Were you present for Mr. McGahn's discussions with Mr. Boente? If yes, describe those conversations.

**RESPONSE:** Yes, I was present for at least some telephone calls between Mr. Boente and Mr. McGahn on March 21, 2017.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- d. Did you discuss with Mr. McGahn his conversation with Mr. Boente? If yes, describe those conversations.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

43. Page 62 of the Report states that Mr. McGahn "recalled that in the week leading up to" Mr. Comey's May 3, 2017 testimony before Congress, "the President said that it would be the last straw if Comey did not take the opportunity to set the record straight by publicly announcing that the President was not under investigation."

- a. Does that statement accurately reflect your recollection?

**RESPONSE:** I do not, today, have an independent recollection of whether any such statement was made during the week prior to May 3, 2017, and, if it was, whether or not I was present.

- b. Were you present when the President made that statement? If yes, describe everything you recall the President saying and who else was present.

**RESPONSE:** See Response to Question 43a.

- c. Did you discuss the President's statement with Mr. McGahn? If yes, describe those discussions.

**RESPONSE:** See Response to Question 43a.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

44. Did the White House Counsel's office instruct President Trump to refrain from contacting Mr. Comey about the FBI's investigation into Russia? If yes, who contacted the President, who was present for those conversations and what was the President was told?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

45. Did President Trump contact Mr. Comey with respect to the FBI's investigation into Russia against the advice of the White House Counsel's office?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

46. Footnote 385 of Page 62 of the Report references an entry in your notes at SC\_AD\_00265 that states "P called Comey – Day we told him not to? 'You are not under investigation' NK/China/Sapping Credibility."

- a. Describe the meaning of the notes in that entry and the date of the events described.

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel's Office's quotation of my handwritten notes, which were taken on or around April 11, 2017.

I affirm the accuracy of the voluntary statements I made when being interviewed by the Special Counsel's Office. See footnote 3.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- b. How did you learn what was said on the President's call with Mr. Comey?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Did you or Mr. McGahn tell the President not to call Mr. Comey? If yes, describe those conversations, including who was present.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- d. Why did you or Mr. McGahn tell the President not to call Mr. Comey?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- e. Did you discuss with Mr. McGahn that the President disregarded what you or Mr. McGahn told him about not calling Mr. Comey? If yes, describe those conversations.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- f. Did you believe it was improper for the President to make such a call to Mr. Comey?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

47. Page 65 of the Report describes a meeting on the morning of Monday, May 8, 2017, in which the President informed Mr. McGahn and others that he decided to terminate Mr. Comey, “read aloud the first paragraphs of the termination letter he wrote with Stephen Miller, and conveyed that the decision had been made and was not up for discussion.” Did you discuss that meeting with Mr. McGahn? If yes, describe those discussions.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

48. Page 66 of the Report states that on May 8, 2017, Mr. McGahn attempted to “slow down the decision-making process” by telling the President that “DOJ leadership was currently discussing Comey’s status” and suggesting that “White House Counsel’s Office attorneys should talk with Sessions and Rod Rosenstein who had recently been confirmed as the Deputy Attorney General.” Did you discuss this event with Mr. McGahn? If yes, describe those discussions and who else was present.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

49. Page 66 of the Report states that at noon on May 8, 2017, Mr. Sessions, Mr. Rosenstein, and Jody Hunt met with Mr. McGahn and White House Counsel's office attorney Uttam Dhillon at the White House to discuss firing Mr. Comey.

a. Did you attend this meeting?

**RESPONSE:** No.

b. If yes, describe the substance of the meeting.

**RESPONSE:** See Response to Question 49a.

c. If you did not attend the meeting, did you discuss the events that occurred during the meeting with any of its attendees?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

d. If yes, identify the person or persons with whom you discussed the meeting and describe the substance of your discussions with these individuals.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

50. Page 66 of the Report states that on May 8, 2017 "[a]t around 5 p.m., the President and several White House officials met with Sessions and Rosenstein to discuss Comey." Did you attend this meeting or discuss the meeting with Mr. McGahn? If yes, describe those discussions.

**RESPONSE:** No, I did not attend this meeting.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

a. Page 67 of the Report states that during the meeting, the President "then distributed copies of the termination letter he had drafted with Miller, and the discussion turned to the mechanics of how to fire Comey and whether the President's letter should be used."

b. Is this statement accurate?

**RESPONSE:** See Response to Question 50.

c. Page 67 of the Report states that during the meeting, Mr. McGahn and Mr. Dhillon urged the President to permit Mr. Comey to resign, but the President was adamant that he be fired.

d. Is this statement accurate?

**RESPONSE:** See Response to Question 50.

e. Page 67 of the Report states that during the meeting, the group discussed the possibility that Rosenstein and Sessions could provide a recommendation in writing that Mr. Comey should be removed.

f. Is this statement accurate?

**RESPONSE:** See Response to Question 50.

g. Page 67 of the Report states that during the meeting, Mr. Rosenstein, in response to the President saying “[p]ut the Russia stuff in the memo,” stated that the Russia investigation was not the basis of his recommendation, so he did not think Russia should be mentioned.”

h. Is this information accurate?

**RESPONSE:** See Response to Question 50.

51. Page 68 of the Report states, “Notes taken by Donaldson on May 9 reflected the view of the White House Counsel’s Office that the President’s original termination letter should ‘[n]ot [see the] light of day’ and that it would be better to offer “[n]o other rationales” for the firing than what was in Rosenstein’s and Sessions’ memoranda.” The accompanying citation (footnote 442) cites your notes, Bates Number SC\_AD\_00342.

a. Does this statement accurately reflect your recollection?

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel’s Office’s quotation of my handwritten notes.

I affirm the accuracy of the voluntary statements I made when being interviewed by the Special Counsel’s Office. See footnote 3.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

b. Identify the individuals who participated in the discussions that led to the view of the White House Counsel’s office regarding the President’s original termination letter reflected in your notes.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Who stated that the original termination letter should not “see the light of day” and what was the basis for that statement?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- d. Did anyone disagree with that statement and if so, who and what the basis for disagreement?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- e. Describe everything you recall about the discussions and events recorded in SC\_AD\_00342, including who made the statements referenced in the notes.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- f. Where did the events and conversations that were recorded in SC\_AD\_00342 relating to the rationales for terminating Mr. Comey as FBI Director take place?

**RESPONSE:** At least some of the conversations took place in Mr. McGahn’s office. I do not, today, have an independent recollection of whether the events or conversations also took place in other locations as well.

- g. Did the rationale offered for firing Mr. Comey as set forth in the original termination letter reflect the President’s actual reasons for firing Mr. Comey?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- h. Did the rationale offered for firing Mr. Comey as set forth in the Rosenstein memorandum reflect the President’s actual reasons for firing Mr. Comey?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- i. Did you discuss with Mr. McGahn the conversations and events recorded in SC\_AD\_00342? If yes, describe those conversations.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- 52. Footnote 442 on Page 68 of the Report states that on Bates Number SC\_AD\_00342, your notes state, “[i]s this the beginning of the end?” and indicates you said you wrote this because you were “worried that the decision to terminate Comey and the manner in which it was carried out would be the end of the presidency.”

- a. Does this accurately reflect your recollection of what you wrote and why you wrote it?

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel’s Office’s quotation of “[i]s this the beginning of the end?” from my handwritten notes.

I have no reason to question the accuracy of the Special Counsel’s Office’s description of the voluntary statements I made to it, although I do not have access to its records of my statements.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- b. What about the decision to terminate Mr. Comey and/or the manner in which it was carried out made you worried that it would mean the end of the presidency?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Explain what you meant when you used the words “end of the presidency?”

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel’s Office’s description of the voluntary statements I made to it, although I do not have access to its records of my statements.

- d. Did you believe at the time that President Trump’s decision to terminate Mr. Comey involved potentially criminal conduct?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.



- e. Did you discuss these concerns with anyone?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- f. If so, with whom did you have those discussions and what specifically was discussed?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

53. Page 69 of the Report, citing your notes at SC\_AD\_00342 (footnote 446) indicates that Mr. Dhillon made a final pitch to the President that Mr. Comey should be permitted to resign, but the President refused.

- a. Does that statement accurately reflect your recollection?

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel's Office's quotation of my handwritten notes or its description of the voluntary statements I made to it, although I do not have access to its records of my statements.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- b. Describe anything you recall about what Mr. Dhillon told the President about permitting Mr. Comey to resign.

**RESPONSE:** I was not present for Mr. Dhillon's conversation with the President.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

54. Page 70 of the Report indicates that Mr. Sessions informed the White House Counsel's office that Mr. Rosenstein was upset that his memorandum was being portrayed as the reason for Mr. Comey's termination.

- a. Does that statement accurately reflect your recollection?

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel's Office's description of the voluntary statements I made to it, although I do not have access to its records of my statements.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- b. Describe any conversation(s) you had regarding whether Mr. Rosenstein or anyone at the Department of Justice was upset about how the Department's memorandum was being portrayed.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Did you believe his memorandum was used improperly or unfairly?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- 55. Page 71 of the Report states that "[w]hen Mr. McGahn asked the President about his comments to [Russian Foreign Minister Sergey] Lavrov, the President said it was good that Comey was fired because that took the pressure off by making it clear that he was not under investigation so he could get more work done."

- a. Were you present for any part of that conversation between Mr. McGahn and the President? If yes, describe what was said and who was present.

**RESPONSE:** No, I was not present.

- b. Did you discuss that conversation with Mr. McGahn? If yes, describe what was said.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Did the President's statements to Mr. Lavrov or anyone else about the reason(s) he fired Mr. Comey concern you at the time? If yes, describe your concerns.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- 56. Page 72 of the Report recount a meeting that occurred the morning of May 10, 2017 at the White House involving former acting FBI Director Andrew McCabe and the President in which the President said he "received 'hundreds' of messages from FBI employees indicating their support for terminating Comey" and "asked McCabe who he had voted for in the 2016 Presidential election." Footnote 477 notes that the account of the meeting is consistent with your notes at Bates Number SC\_AD\_00347.

- a. Did you attend that meeting involving Mr. McCabe and the President?

**RESPONSE:** No.

- b. Did you take notes at the meeting?

**RESPONSE:** See Response to Question 56a.

- c. Is the account in the Report of what took place at the meeting consistent with your recollection?

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel's Office's description of my handwritten notes.

Any characterization of my notes set forth in the Report is that of the Special Counsel's Office and may be derived, in part, from sources other than my notes.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- d. Describe everything you recall about that meeting.

**RESPONSE:** See Response to Question 56a.

- e. Describe all conversations you had with Mr. McGahn or anyone else about that meeting.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- f. Identify the other individuals who attended the meeting.

**RESPONSE:** See Response to Question 56a.

57. On pages 72 and 73, the Report states that on May 10, 2017, Mr. Sessions and Mr. Rosenstein "each spoke to McGahn and expressed concern that the White House was creating a narrative that Rosenstein had initiated the decision to fire Comey."

- a. Were you present for any parts of those conversations?

**RESPONSE:** It is possible, although I do not, today, have an independent recollection of whether or not I was present for the cited discussions.

- b. Does the Report accurately describe those conversations based on your recollection of events?

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel's Office's description of my voluntary statements to it, although I do not have access to its records of my statements.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Describe everything you recall being said.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- d. Identify all individuals who participated in those conversations.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

58. Page 73 of the Report states that "[t]he White House Counsel's Office agreed that it was factually wrong to say that the Department of Justice had initiated Comey's termination."

- a. Does that statement accurately reflect your recollection?

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel's Office's description of my voluntary statements to it, although I do not have access to its records of my statements.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- b. Who in the White House Counsel's office agreed to this?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Did you or anyone else express those concerns to the President at the time? If so, who was present for those discussions and what was said?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

59. Page 73 of the Report states that Mr. McGahn asked attorneys in the White House Counsel's office to work with the press office to correct the narrative.

a. Does that statement accurately reflect your recollection?

**RESPONSE:** Yes.

b. Did the White House Counsel's office take steps to correct the narrative? If so, who took those steps and what was done?

**RESPONSE:** The White House has directed that I not respond to these questions because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

c. Did you have any concerns about the false narrative created by President Trump regarding the reasons for Mr. Comey's termination?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

60. Page 73 of the Report references the President's May 11, 2017 interview with Lester Holt. The Report states that the President told White House Counsel's office attorneys in advance of the interview that the communications team could not get the story right, so he was going on Lester Holt to say what really happened.

a. Did you participate in that conversation with President Trump? If yes, describe everything you recall about that conversation?

**RESPONSE:** I did not participate in any such conversation.

b. Identify all individuals that participated in that conversation.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

c. Did you have any discussions with Mr. McGahn or anyone else about the President's interview with Lester Holt following the interview? If yes, describe those conversations.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

61. On May 23, 2017, the Department of Justice announced that ethics officials cleared Robert S. Mueller, III to serve as the Special Counsel. Page 81 of the Report states that

Mr. McGahn “recalled that around the same time, the President complained about the asserted conflicts and prodded McGahn to reach out to Rosenstein about the issue.”

- a. Were you present for any of the conversation(s) between Mr. McGahn and the President on this subject? If yes, describe everything you recall being said.

**RESPONSE:** I was not present for any in-person discussions between the President and Mr. McGahn on this day. It is possible that I was present in Mr. McGahn’s office for, but not a participant in, a telephone discussion between the President and Mr. McGahn.

- b. Did you discuss the subject of Special Counsel Mueller’s purported “conflicts” with Mr. McGahn? If yes, describe everything you recall about those conversations.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Do you witness the President’s reaction to this news?

**RESPONSE:** No.

- d. If yes, describe the President’s reaction, what was said, and who else was present.

**RESPONSE:** See Response to Question 61(c).

62. Footnote 540 on page 81 references an entry in your notes, at Bates Number SC\_AD\_00361, recording a May 23, 2017 conversation between Mr. McGahn and the President in which Mr. McGahn “told the President that he would not call Rosenstein” and “suggest[ed] that the President not make such a call either.”

- a. Does that statement accurately reflect your recollection?

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel’s Office’s description of my handwritten notes or my voluntary statements to it, although I do not have access to its records of my statements.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- b. Identify each person who participated in the conversation.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Did you discuss that conversation with Mr. McGahn? If so, describe what was discussed.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- d. Did you discuss that conversation with anyone else?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- e. If so, describe what was discussed.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

63. The Report, on pages 81 and 82 citing to your notes at Bates Number SC\_AD\_00361, states (footnote 541) that Mr. McGahn “advised that the President could discuss the issue [of whether Mr. Mueller had conflicts of interest] with his personal attorney but it would “‘look like still trying to meddle in [the] investigation’ and ‘knocking out Mueller’ would be ‘[a]nother fact used to claim obst[ruction] of justice.’”

- a. Does that statement accurately reflect your recollection?

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel’s Office’s quotations of “look like still trying to meddle in [the] investigation”; “knocking out Mueller”; and “[a]nother fact used to claim obst[ruction] of justice” from my handwritten notes.

I affirm the accuracy of the voluntary statements I made when being interviewed by the Special Counsel’s Office. See footnote 3.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- b. Describe what your notes mean.

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel’s Office’s description of my handwritten notes or my voluntary statements to it, although I do not have access to its records of my statements.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Did you agree that President Trump's conduct exposed him to potential obstruction of justice allegations? If yes, did you discuss that belief with anyone else and, if so, who did you discuss it with and what was said?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- d. Were you concerned at the time that the President may have committed obstruction of justice in connection with the investigation? If yes, did you discuss that concern with anyone else and, if so, with whom did you discuss it and what was said?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- e. Did you have any discussions about the statements reflected in these notes with Mr. McGahn or anyone else? If yes, describe those conversations.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

64. Page 82 of the Report states that Mr. McGahn also "told the President that his 'biggest exposure' was not his act of firing Comey but his 'other contacts' and 'calls,' and his 'ask re: Flynn.'" The accompanying citation (footnote 542) refers to your notes, SC\_AD\_00361.

- a. Does the term "biggest exposure" refer to the President's potential legal liability for obstruction of justice?

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel's Office's quotations of "biggest exposure"; "other contacts"; "calls"; and "ask re: Flynn," from my handwritten notes.

I affirm the accuracy of the voluntary statements I made when being interviewed by the Special Counsel's Office. See footnote 3.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- b. If not, to what does it refer?

**RESPONSE:** See Response to Question 64(a).



- c. Which “other contacts” or “calls” are being referenced?

**RESPONSE:** See Response to Question 64(a).

- d. Which “ask re: Flynn” is being referenced?

**RESPONSE:** See Response to Question 64(a).

65. Footnote 539 on page 81 states that “McGahn and Donaldson said that after the appointment of the Special Counsel, they considered themselves potential fact witnesses and accordingly told the President that inquiries related to the investigation should be brought to his personal counsel.”

- a. Does that statement accurately reflect your recollection?

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel’s Office’s description of the voluntary statements I made to it, although I do not have access to its records of my statements.

I was not a participant in any such conversation with the President. Any characterization of my voluntary statements set forth in the Report is that of the Special Counsel’s Office and may be derived, in part, from sources other than my statements.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- b. Did you discuss with Mr. McGahn this conversation with the President, either before or after you had it? If yes, describe those discussions.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. At the time, did you consider the events you observed regarding President Trump’s conduct to be evidence of potential criminal conduct?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- d. Did the President follow the advice you and Mr. McGahn gave to the President and avoid discussing the investigation with you and Mr. McGahn?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

66. Page 85 of the Report indicates that on Saturday, June 17, 2017, President Trump called Mr. McGahn and “directed him to have the Special Counsel removed.”

a. Did you personally hear any part of these conversation(s)?

**RESPONSE:** No.

b. If yes, describe everything that the President said on the call(s).

**RESPONSE:** See Response to Question 66(a)

c. Did Mr. McGahn speak to you about these call(s)?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

d. If yes, describe everything that Mr. McGahn told you.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

e. Did Mr. McGahn express to you any concerns about the President’s call(s)?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

f. If yes, what concerns did Mr. McGahn express?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

67. Page 86 of the Report indicates that Mr. McGahn called you on or about June 17, 2017 to inform you that he had decided to resign.

a. Does that statement accurately reflect your recollection?

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel’s Office’s description of the voluntary statements I made to it, although I do not have access to its records of my statements.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- b. Describe everything you recall Mr. McGahn saying to you on the call and what you said in response.

**RESPONSE:** See Response to Question 67a.

- c. Did Mr. McGahn express his concern that the President was asking him to do something that he believed was unlawful or improper?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- d. Did you tell anyone else what Mr. McGahn had told you?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- e. If so, who did you tell and what did you say?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- f. Did Mr. McGahn tell you if he told anyone else that he planned to resign?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- g. If so, who else did he tell and what did he tell you he said?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

68. Page 86 of the Report states that “Donaldson recalled that McGahn told her the President had called and demanded he contact the Department of Justice and that the President wanted him to do something that McGahn did not want to do.”

- a. Does that statement accurately reflect your recollection?

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel’s Office’s description of the voluntary statements I made to it, although I do not have access to its records of my statements.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- b. Did Mr. McGahn state why he did not want to do it?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. Did Mr. McGahn express in words or substance a concern that the President was asking him to help interfere with or obstruct the ongoing investigation?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

69. Page 86 of the Report states that Mr. McGahn told Donaldson that the President had called at least twice and in one of the calls asked “have you done it?” Does that statement accurately reflect your recollection?

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel’s Office’s description of the voluntary statements I made to it, although I do not have access to its records of my statements.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

70. Page 87 of the Report states that you inferred that the President’s directive was related to the Russia investigation.

- a. Does that statement accurately reflect your recollection?

**RESPONSE:** I have no reason to question the accuracy of the Special Counsel’s Office’s description of the voluntary statements I made to it, although I do not have access to its records of my statements.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- b. Describe the underlying facts that led you to infer that the President’s directive to Mr. McGahn related to the Russia investigation.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

71. Page 87 of the Report states that “Donaldson prepared to resign along with McGahn.”

a. Does that statement accurately reflect your recollection?

**RESPONSE:** Yes.

b. Why did you prepare to resign along with Mr. McGahn?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

c. Did you tell anyone else you planned to resign?

**RESPONSE:** I have been instructed by my counsel not to answer this question because it implicates common law privilege.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

d. If so, who and what exactly did you say?

**RESPONSE:** See Response to Question 71c.

e. Did you believe the President was asking Mr. McGahn to do something that was unlawful or improper? If yes, explain why you felt that way.

**RESPONSE:** I have been instructed by my counsel not to answer this question because it calls for speculation and is vague as to “improper.”

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

72. Did you record any portion of your conversation(s) with Mr. McGahn about the events of June 17, 2017 in your notes? If not, why didn’t you record the conversation?

**RESPONSE:** No. To the best of my recollection, these events occurred on a weekend and I was not in possession of my running handwritten notes.

73. Do you know why Mr. McGahn decided not to resign?

**RESPONSE:** No, I do not know why Mr. McGahn decided not to resign.

74. If so, why and what is the basis for your knowledge?

**RESPONSE:** See Response to Question 73.

75. Pages 116-17 of the Report describes a February 6, 2018 conversation in the Oval Office involving the President, Mr. McGahn, and Chief of Staff John Kelly in which the President ordered Mr. McGahn to “correct” reports that the President had ordered Mr. McGahn to fire the Special Counsel.

a. Did you participate in that meeting?

**RESPONSE:** No.

b. Did you ever learn from Mr. McGahn or otherwise that the President had asked him to deny that the President had told him to fire the Special Counsel at that meeting or on any other occasion? If yes, describe everything that you learned about what the President told Mr. McGahn and how you learned it.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

c. Did you discuss with Mr. McGahn that the President had asked him to deny that the President had told him to fire the Special Counsel? If yes, describe everything that Mr. McGahn said to you.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

d. Did you discuss with Mr. McGahn what Mr. McGahn said in response to the President’s request that he deny that the President had told him to fire the Special Counsel? If yes, describe everything that Mr. McGahn said to you.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

e. Did you ever learn from Mr. McGahn or otherwise that the President had asked him to create a letter denying the President had told him to fire the Special Counsel? If yes, describe everything that you learned about what the President told Mr. McGahn and how you learned it?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

76. Page 95 of the Report states that on July 22, 2017, President Trump told then-White House Chief of Staff Reince Priebus to get Mr. Sessions to resign “immediately,” because Mr. Sessions would not reverse his decision to recuse himself from the Russia investigation. The Report further states that Priebus thought this was, “all wrong,” so he asked Mr. McGahn for advice on what to do.

- a. Do you have direct personal knowledge regarding this event? If yes, describe what you know and how you know it.

**RESPONSE:** I was not present for any such conversation between President Trump and Mr. Priebus on or about July 22, 2017.

I am aware of a conversation between Mr. Priebus and Mr. McGahn, although I do not, today, have an independent recollection of whether or not I was present for any such conversation between Mr. Priebus and Mr. McGahn, or subsequently learned about this event.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- b. Did you speak with Mr. McGahn about this event? If yes, describe the substance of those conversations.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

77. Page 113 of the Report states that on January 25, 2018, the New York Times reported that in June 2017, the President had ordered Mr. McGahn to have the Department of Justice fire the Special Counsel. Page 114 of the Report states that on January 26, 2018, the President's personal counsel called Mr. McGahn's personal attorney and said that the President wanted Mr. McGahn to put out a statement denying that he had been asked to fire the Special Counsel and that he had threatened to quit in protest.

- a. Do you have any personal knowledge regarding these events?

**RESPONSE:** I was not present for any such telephone call on or about January 26, 2018.

I affirm the accuracy of the voluntary statements I made when being interviewed by the Special Counsel's Office. See footnote 3.

- b. Did you ever speak to Mr. McGahn about efforts to have him dispute the January 25, 2018 New York Times report?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- c. If so, describe the substance of those conversations.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

78. Page 115 of the Report also indicates that Sarah Sanders contacted Mr. McGahn about the January 25, 2018 New York Times report.

- a. Do you have personal knowledge regarding the conversation between Ms. Sanders and Mr. McGahn? If yes, describe that discussion?

**RESPONSE:** I do not, today, have an independent recollection of whether or not I was present for any such conversation.

It is possible that I subsequently learned of such a conversation.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- b. Did Mr. McGahn speak to you about his conversation with Ms. Sanders about the January 25, 2018 New York Times report? If yes, describe your conversation with Mr. McGahn on that subject.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

79. Page 116 of the Report indicates that Rob Porter told Mr. McGahn that he had to write a letter to dispute that he was ordered to terminate the Special Counsel, and that if he did not, the President may fire Mr. McGahn.

- a. Do you have personal knowledge regarding this event?

**RESPONSE:** I am generally aware such a conversation took place. I do not, today, have an independent recollection of whether or not I was present for any such conversation or subsequently learned of it, nor do I have an independent recollection of the precise contents of the conversation.

- b. Did you speak to Mr. McGahn about Mr. Porter's instructions from the President?

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.



- c. If yes, describe the substance of your conversation with Mr. McGahn about the President's instructions to write a letter disputing that he was never ordered to terminate the Special Counsel.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- 80. Page 116 of the Report states that on February 6, 2018, Mr. McGahn met with the President in the Oval Office to discuss the New York Times article.

- a. Do you have personal knowledge regarding the discussions that occurred during this meeting? If yes, describe those discussions.

**RESPONSE:** I am aware of these discussions. I was not present in the Oval Office for any such discussion on or about February 6, 2018, but I subsequently learned of it.

In addition, the White House has directed that I not provide any further answer to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- b. Did you ever speak to Mr. McGahn about what occurred during this meeting? If yes, describe your conversation with Mr. McGahn about this subject.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

- 81. Page 116 of the Report states that on the morning of February 6, 2018, the President's personal counsel called Mr. McGahn's attorney and said that "the President was going to be speaking with McGahn and McGahn could not resign no matter what happened in the meeting."

- a. Do you have personal knowledge regarding this call? If yes, describe what was said on the call.

**RESPONSE:** I was not present for any such telephone call on or about February 6, 2018. I do not, today, have an independent recollection of whether I subsequently learned of it.

- b. Did you speak with Mr. McGahn about this event? If yes, describe your conversation with Mr. McGahn about this subject.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

82. State each date on which you were interviewed by the Special Counsel, who was present for those interviews and where those interviews took place.

**RESPONSE:** I was interviewed on November 6, 2017, and April 2, 2018.

Present were my personal counsel and representatives from the Special Counsel's Office.

Those interviews took place in a Department of Justice office.

83. Were you or your counsel provided any documents in advance of your interviews with the Special Counsel by the White House?

**RESPONSE:** Yes.

- a. If so, who provided those documents, what documents were provided and where are those documents now.

**RESPONSE:** The White House has directed that I not respond to this question because of the constitutionally-based Executive Branch confidentiality interests that are implicated.

84. Were you or your counsel provided any documents in advance of your interviews with the Special Counsel by the Special Counsel's Office? If so, who provided those documents, what documents were provided and where are those documents now.

**RESPONSE:** No.

85. Did anyone at the White House, including the President, direct you not to answer any questions during those interviews?

**RESPONSE:** No. I was encouraged by the White House to cooperate fully with the Special Counsel's Office.

86. Did anyone at the White House, including the President, direct you not to provide or discuss any documents during those interviews?

**RESPONSE:** No. I was encouraged by the White House to cooperate fully with the Special Counsel's Office.

87. Did anyone invoke privilege over any of your testimony to the Special Counsel's Office?

**RESPONSE:** As to my role as a private attorney advising the Trump campaign, the Trump campaign has not waived attorney-client privilege in connection with my provision of a voluntary statement to the Special Counsel's Office.

As to my employment at the White House, I was advised and understood that the position of the White House and the Department of Justice was that an interview with the Special Counsel, as a subordinate Executive Branch officer to the President, did not implicate constitutionally-protected Executive Branch

confidentiality interests and therefore my participation would not constitute a waiver of executive privilege for other purposes.

88. Did you ever discuss these interviews with the President? If yes, describe those discussions.

**RESPONSE:** No.

89. Did you discuss the substance of your interviews with anyone outside the Special Counsel's Office or your attorney? If yes, describe those discussions.

**RESPONSE:** No.

90. Did you ever witness President Trump asking anyone to make a statement that was not true during your time at the White House?

**RESPONSE:** I did not witness the President direct anyone to make any statement that was, to my knowledge, untrue.

91. When was the last time you spoke with the President? Who initiated that contact and what was discussed?

**RESPONSE:** I last spoke with the President when I posed for a "departure photo" with him in the Oval Office shortly before leaving my employment at the White House. The President and I exchanged pleasantries and he thanked me for my service, but as far I recall, we had no substantive discussions.

92. Has anyone from the President's legal team, staff or his family reached out to you about your answers to these questions? If yes, who contacted you and what was said?

**RESPONSE:** No.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit II**

JERROLD NADLER, New York  
CHAIRMAN

DOUG COLLINS, Georgia  
RANKING MEMBER

ZOE LOFGREN, California  
SHEILA JACKSON LEE, Texas  
STEVE COHEN, Tennessee  
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LUCY McBATH, Georgia  
GREG STANTON, Arizona  
MADELEINE DEAN, Pennsylvania  
DEBBIE MUCARSEL-POWELL, Florida  
VERONICA ESCOBAR, Texas

ONE HUNDRED SIXTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

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May 7, 2019

William A. Burck, Esq.  
Quinn Emanuel Urquhart & Sullivan  
1300 I St. NW  
Suite 9000  
Washington, D.C. 20005

Dear Mr. Burck:

On Monday, April 22, the House Committee on the Judiciary served a subpoena on your client, former White House Counsel Donald F. McGahn II, compelling the production of documents in Mr. McGahn's possession or control by May 7, and his testimony on May 21, 2019. We write in response to your letter received this morning regarding that subpoena.

As an initial matter, regarding the subpoenaed documents, the White House Counsel's letter did not actually *invoke* executive privilege, but rather merely suggested at the 11th hour – without providing any supporting authority – that all requested documents “*implicate* significant Executive Branch confidential interests and executive privilege.”<sup>1</sup> This blanket suggestion of potential privilege is entirely insufficient. As the district court for the District of Columbia held in *Committee on the Judiciary v. Miers*, a subpoena recipient is “not excused from compliance with [a] Committee's subpoena by virtue of a claim of executive privilege that *may ultimately be made*.”<sup>2</sup> Nor can a “blanket assertion of privilege over all records generated after a particular date . . . pass muster,” without a “showing . . . that any of the individual records satisf[y] the prerequisites for the application of the privilege.”<sup>3</sup>

Even if the President were to properly invoke privilege, any claim of executive privilege has been waived as to documents that the White House voluntarily disclosed to Mr. McGahn and

<sup>1</sup> Letter to Chairman Nadler from Pat A. Cipollone (May 7, 2019) (*emphasis added*).

<sup>2</sup> Mem. Op., *Comm. on Judiciary v. Miers*, No. 08-cv-0409-JDB (D.D.C. Jul. 31, 2008), at 91 (*emphasis added*).

<sup>3</sup> *Committee on the Judiciary, U.S. House of Representatives v. Miers*, 558 F. Supp. 2d 53 (D.D.C. 2008).

his counsel. The D.C. Circuit expressly held in *In re Sealed Case (Espy)* that the White House “waive[s] its claims of privilege in regard to specific documents that it voluntarily reveal[s] to third parties outside the White House.”<sup>4</sup> In *Espy*, as is the case here, the disclosure at issue was to the attorney for a former government official.<sup>5</sup> Thus, given that there has been neither an actual assertion of executive privilege, nor an individualized showing that the privilege would apply to the subpoenaed records, the Committee continues to insist upon compliance with the subpoena.

As to Mr. McGahn’s own document production obligations, the subpoena plainly directs that your client must provide a privilege log containing specific information for any document in his possession or control that “is withheld in full or in part on any basis,” including on “the basis of a privilege asserted by or on behalf of the White House, or at the request of the White House.”<sup>6</sup> As the instructions also make clear, any “objections or claims of privilege are waived if you fail to provide an explanation of why full compliance is not possible and a log identifying with specificity the ground(s) for withholding each withheld document prior to the request compliance date.”<sup>7</sup> In accordance with the requirements laid out in our subpoena, we expect a full privilege log specifying each document withheld, the asserted basis for so doing and the other information demanded, to be provided forthwith.

Turning to the other requirement of the subpoena – that Mr. McGahn appear before the Committee to provide testimony in two weeks – I fully expect that the Committee will hold Mr. McGahn in contempt if he fails to appear before the Committee, unless the White House secures a court order directing otherwise.<sup>8</sup> Further, even if Mr. McGahn is authorized by court order to invoke executive privilege as to certain testimony, he still is required by law to “appear before the Committee to provide testimony, and invoke executive privilege where appropriate.”<sup>9</sup>

Consistent with the rules of the House of Representatives, and as the Supreme Court has admonished, “[a] subpoena has never been treated as an invitation to a game of hare and hounds, in which the witness must testify only if cornered at the end of the chase. If that were the case, then, indeed, the great power of testimonial compulsion, so necessary to the effective functioning of courts and legislatures, would be a nullity.”<sup>10</sup> And the Supreme Court has “often iterated the

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<sup>4</sup> *In re Sealed Case*, 121 F.3d 729, 741-42 (D.C. Cir. 1997).

<sup>5</sup> *See id.*

<sup>6</sup> Subpoena by Authority of the House of Representatives of the United States of America to Donald F. McGahn for documents and testimony, signed by Representative Jerrold Nadler, April 22, 2019.

<sup>7</sup> *Id.*

<sup>8</sup> *See, e.g., United States v. Bryan*, 339 U.S. 323, 332 (1950) (reasoning that a party cannot fail to comply with a subpoena absent a “return of the writ” providing reasons for non-compliance, because to “deny the Committee the opportunity to consider the objection or remedy it is in itself a contempt of its authority and an obstruction of its processes”).

<sup>9</sup> *Miers*, 558 F. Supp. 2d 53, 106 (D.D.C. 2008).

<sup>10</sup> *Bryan*, 339 U.S. at 331.

importance of this public duty, which every person within the jurisdiction of the Government is bound to perform when properly summoned.”<sup>11</sup>

As I am sure you are aware, the President recently declared that he is “fighting *all* the subpoenas” issued by Congress, evidently without regard to whether he has any legal basis to do so.<sup>12</sup> To be clear, a letter from the White House in service of the President’s apparent goal of blocking or delaying testimony that the President believes would be politically damaging is not a basis for Mr. McGahn to violate his legal obligation to appear before the Committee. Rather, if the President wishes to block Mr. McGahn’s appearance in the face of a duly issued subpoena, the burden rests with the White House to file an action in court to attempt to do so.

Moreover, with regard to Mr. McGahn’s testimonial obligations, there is no valid executive privilege invocation that could be asserted in good faith regarding the subject of the Special Counsel’s investigation and report. President Trump had the opportunity to assert executive privilege over Mr. McGahn’s interviews with the Special Counsel and, for strategic reasons, “declined to assert any privilege over Mr. McGahn’s testimony,” allowing Mr. McGahn to answer the Special Counsel’s questions “fulsomely and honestly.”<sup>13</sup> Thereafter, the White House made the same strategic decision with regard to publication of the report itself not to assert executive privilege over *any* portion of the report, including portions describing Mr. McGahn’s communications with the President and other senior officials in extensive detail.<sup>14</sup> As the D.C. Circuit has already recognized, publication of such information “waives [] privileges for the document or information specifically released.”<sup>15</sup>

The President and his personal counsel have also routinely commented publicly regarding the President’s communications with Mr. McGahn, and the content of Mr. McGahn’s testimony to the Special Counsel. By way of example, on April 25, shortly after the Report was released, President Trump denied a central event described by Mr. McGahn, tweeting, “I never told the White House Counsel Don McGahn to fire Robert Mueller.”<sup>16</sup> As has long been recognized, no person—not even the President—can employ privilege as both a sword and a shield, selectively cherry picking which information to tout publicly in his defense, and which information to deliberately withhold from the American people.<sup>17</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> Charlie Savage, *Trump Vows Stonewall of ‘All’ House Subpoenas*, N.Y. Times, Apr. 24, 2019 (emphasis added).

<sup>13</sup> Michael S. Schmidt & Maggie Haberman, *White House Counsel, Don McGahn, Has Cooperated Extensively in Mueller Inquiry*, N.Y. TIMES, Aug. 18, 2018.

<sup>14</sup> Attorney General Barr Press Conference on April 18, 2019 (the President confirmed that “he would not assert privilege over the Special Counsel’s report . . . [and] no material has been redacted based on executive privilege.”).

<sup>15</sup> *In re Sealed Case*, 121 F.3d. at 741.

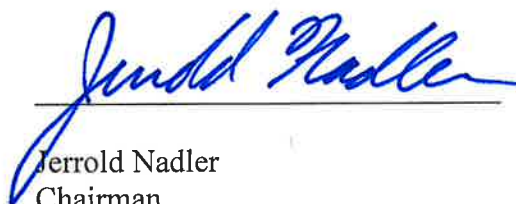
<sup>16</sup> Donald J. Trump (@realDonaldTrump), Twitter (Apr. 25, 2019, 4:47 AM).

<sup>17</sup> *See, e.g., Nixon v. Sirica*, 487 F.2d 700, 717-18 (D.C. Cir. 1973) (considering public statements by President Nixon to be a factor undermining the White House claimed need for confidentiality in related conversations).

Lastly, this Committee is currently engaged in an investigation into alleged obstruction of justice, public corruption and other abuses of power by the President and his administration. Even in its redacted form, the Special Counsel's report offers substantial evidence and analysis that the President did, in fact, engage in multiple acts of obstruction. Mr. McGahn provided critical information that appears throughout Volume II of the Special Counsel's report, detailing incidents in which, *inter alia*, the President: sought to stop former Attorney General Sessions from recusing himself from the Russia investigation and then to have Sessions reverse his recusal decision<sup>18</sup>; directed Mr. McGahn to have Special Counsel Mueller fired<sup>19</sup>; directed Mr. McGahn to deny that attempted firing<sup>20</sup>; and sought to curtail the scope of the Special Counsel's investigation.<sup>21</sup> Where, as here, there is substantial evidence indicating that the President engaged in such misconduct, the public interest in the "fair administration of justice" outweighs the President's "generalized interest in confidentiality."<sup>22</sup>

For all these reasons, Mr. McGahn is required to appear and provide testimony before the Committee absent a court order authorizing non-compliance, as well as provide a privilege log for any documents withheld. Otherwise, the Committee will have no choice but to resort to contempt proceedings to ensure that it has access to the information it requires to fulfill its constitutionally mandated duties.

Sincerely,



\_\_\_\_\_  
Jerrold Nadler  
Chairman  
House Committee on the Judiciary

cc: Doug Collins  
Ranking Member  
House Committee on the Judiciary

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<sup>18</sup> Special Counsel Robert S. Mueller III, *Report on the Investigation Into Russian Interference in the 2016 Presidential Election*, Vol. II, at 48-51, 107-11 (hereinafter "Mueller Report").

<sup>19</sup> *Id.* Vol. II, at 77-87.

<sup>20</sup> *Id.* Vol. II, at 90-94.

<sup>21</sup> *Id.* Vol. II, at 113-18.

<sup>22</sup> *United States v. Nixon*, 418 U.S. 683, 713 (1974).



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit JJ**

**quinn emanuel trial lawyers | washington, dc**

1300 I Street NW, Suite 900, Washington, District of Columbia 20005-3314 | TEL (202) 538-8000 FAX (202) 538-8100

WRITER'S DIRECT DIAL NO.  
**(202) 538-8120**

WRITER'S EMAIL ADDRESS  
**williamburck@quinnemanuel.com**

May 7, 2019

**VIA E-MAIL**

The Honorable Jerrold Nadler  
Chairman  
United States House of Representatives  
Committee on the Judiciary  
Washington, DC 20515-6216  
[HJUD.Correspondence@mail.house.gov](mailto:HJUD.Correspondence@mail.house.gov)

Re: April 22, 2019 Subpoena

Dear Chairman Nadler,

As you know, I previously accepted service of the subpoena for documents issued by the United States House of Representatives Committee on the Judiciary (hereinafter, the "Committee"), with return time and date of 10:00 am EDT, today May 7, 2019, on behalf of my client Donald F. McGahn, former Counsel to the President of the United States. Upon receipt of the subpoena, I forwarded it to the White House Counsel's Office as it seeks, as relevant to Mr. McGahn, production of White House documents and other materials relating to Executive Branch equities (collectively, "White House documents"). Subsequently, representatives from the White House Counsel's Office and the Department of Justice reviewed the documents in question.

This morning, I received the enclosed letter from current Counsel to the President, Pat A. Cipollone. In it, Mr. Cipollone explains that Acting Chief of Staff, Mick Mulvaney, who I understand is the custodian of documents for the White House, has directed that Mr. McGahn not produce the White House documents "because they implicate significant Executive Branch confidentiality interests and executive privilege." Mr. Cipollone's letter goes on to note that "the Department of Justice is aware of and concurs with this legal position."

As you will appreciate, Mr. McGahn, as a former Assistant to the President and the most senior attorney for the President in his official capacity, continues to owe certain duties and obligations to the President which he is not free to disregard. Here, the Committee seeks to compel Mr. McGahn to produce White House documents the Executive Branch has directed that he not

**quinn emanuel urquhart & sullivan, llp**

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produce. Where co-equal branches of government are making contradictory demands on Mr. McGahn concerning the same set of documents, the appropriate response for Mr. McGahn is to maintain the status quo unless and until the Committee and the Executive Branch can reach an accommodation. Please note Mr. Cipollone writes that his office will respond to the Committee about the White House documents.

Finally, I apologize that my response is later than requested in the subpoena. I did not receive Mr. Cipollone's letter until after 10:00 am EDT today. Although I was informed by phone earlier this morning that the White House would be taking this position, I believed it was important that the Committee receive Mr. Cipollone's letter contemporaneously with mine for Mr. McGahn.

I am, of course, available to you or Committee staff if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'W. A. Burck', with a long horizontal stroke extending to the right.

William A. Burck

cc: Honorable Doug Collins, Ranking Member

Enclosure

**THE WHITE HOUSE**

**WASHINGTON**

May 7, 2019

Mr. William A. Burck  
Quinn Emanuel Urquhart & Sullivan, LLP  
1300 I Street NW, Suite 900  
Washington, D.C. 20005

Dear Mr. Burck:

I write per your request in reference to a subpoena issued to your client, Donald F. McGahn II, by the Committee on the Judiciary of the United States House of Representatives (the "Committee") on April 22, 2019. That subpoena requests the production of documents by 10:00 a.m. on Tuesday, May 7.

The subpoena seeks certain White House records provided to Mr. McGahn while he was Counsel to the President that are related to Special Counsel Robert S. Mueller, III's investigation. As you know, the White House provided these records to Mr. McGahn in connection with its cooperation with the Special Counsel's investigation and with the clear understanding that the records remain subject to the control of the White House for all purposes. The White House records remain legally protected from disclosure under longstanding constitutional principles, because they implicate significant Executive Branch confidentiality interests and executive privilege.

For these reasons, the Acting Chief of Staff to the President, Mick Mulvaney, directs Mr. McGahn not to produce these White House records in response to the Committee's April 22 subpoena. The Department of Justice is aware of and concurs with this legal position. My Office will respond to the Committee concerning its interest in the records.

Thank you for your attention to this matter. Please do not hesitate to contact me or Mike Purpura if you have any questions.

Sincerely,

A handwritten signature in black ink, reading "Pat A. Cipollone". The signature is stylized with a large, looping "P" and "C".

Pat A. Cipollone  
*Counsel to the President*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF  
REPRESENTATIVES,  
2138 Rayburn House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

DONALD F. MCGAHN II,  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001,

*Defendant.*

Case No. 1:19-cv-2379

**Exhibit KK**

JERROLD NADLER, New York  
CHAIRMAN

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BEN CLINE, Virginia  
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GREG STEUBE, Florida

ONE HUNDRED SIXTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951  
judiciary.house.gov

May 16, 2019

Mr. Pat Cipollone  
Counsel to the President  
The White House  
1600 Pennsylvania Ave, N.W.  
Washington, D.C. 20002

Dear Mr. Cipollone:

I write to reply to your May 14 and May 15, 2019 letters. As a threshold matter, your failure to comprehend the gravity of the Special Counsel's findings is astounding and dangerous. The Mueller Report found that Russia interfered in our elections and outlined our nation's acute vulnerability to another attack. The Special Counsel also found that the President engaged in multiple acts to exert undue influence over law enforcement investigations. Recently, more than 900 former federal prosecutors of both parties wrote that such conduct, but for the Office of Legal Counsel policy against charging sitting presidents (followed by the Special Counsel), would have resulted in the indictment of Donald Trump for serious crimes. As the prosecutors wrote: "As former federal prosecutors, we recognize that prosecuting obstruction of justice cases is critical because unchecked obstruction—which allows intentional interference with criminal investigations to go unpunished—puts our whole system of justice at risk. We believe strongly that, but for the OLC memo, the overwhelming weight of professional judgment would come down in favor of prosecution for the conduct outlined in the Mueller Report."<sup>1</sup>

Accordingly, the Committee has the right – indeed the duty under the Constitution – to investigate these and other related circumstances. Recent developments indicate that the objects of our investigation as to both past and current actions are needed more urgently than ever. Both the Russian threat to our elections and the President's threat to the rule of law continue.

Against this backdrop, your sweeping claim that the Committee has no right to seek documents and information related to the issues investigated by the Special Counsel is unprecedented and unsupported by law, history and practice. The Administration's position that the President cannot be indicted by the Department of Justice, and that Congress cannot

<sup>1</sup> May 6, 2019 Statement by Former Federal Prosecutors.

investigate him, effectively places the President above the law. That claim, like your demand that the Committee “discontinue its inquiry,”<sup>2</sup> is inconsistent with the most basic principles underlying our constitutional system of government. We can only conclude that the President’s recent pronouncement that he will “fight all the subpoenas” issued by Congress<sup>3</sup> is what prompted that portion of your May 15 missive responding to the Committee’s letter sent over two months prior.

Your letters also inaccurately describe the documents the Committee seeks in its subpoena, and the Committee’s accommodation efforts to date. To clarify the record, I set forth below the exact terms of the current offer of accommodation. I urge the Administration to resume negotiations to resolve this dispute, which were abruptly broken off by the Department of Justice when it rejected the Committee’s most recent counter-offer.

#### The Committee’s April 18, 2019 Subpoena and Accommodation Process

Your May 14, 2019 letter references and attaches only letters from the Department to the Committee; it does not attach any of the letters from the Committee to the Department, including the most recent letter dated May 10, 2019 (attached), summarizing in detail the extensive negotiations regarding the subpoena.<sup>4</sup>

The Committee has agreed, and remains prepared, to limit its request for the underlying documents to those specifically referenced in the Muller Report (request 2 in the April 18 subpoena), and relieve the Department of the obligation to produce the other underlying documents responsive to request 3 (which instruction 24 to the April 18 subpoena states were only subject to consultation regarding the time period for compliance). In addition, the Committee has offered the additional accommodation of providing a defined set of the highest priority referenced documents for initial production, thereby making the Department’s review less burdensome to perform. It was against this backdrop that the Department refused to engage in further discussions, or even respond to the Committee’s offer. Instead, on May 7, 2019, the Department sent its eleventh-hour threat that if the contempt markup was not postponed, the Attorney General would request that the President invoke executive privilege as to every document responsive to the subpoena – a threat the President, of course, promptly followed through on the following morning.

For these reasons, your claim that “the Committee rushed to vote on contempt for failing to provide 100% and immediate compliance with a subpoena that seeks *millions of pages* of documents from a prosecutor’s files”<sup>5</sup> is demonstrably false. As described above, the Committee agreed not only to limit its request to those documents that were publicly referenced in the Special Counsel report, but also further agreed to prioritize that limited set of documents.

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<sup>2</sup> May 15, 2019 Letter from Pat A. Cipollone, p.3.

<sup>3</sup> Charlie Savage, *Trump Vows Stonewall of ‘All’ House Subpoenas*, N.Y. Times, April 24, 2019 (emphasis added).

<sup>4</sup> May 10, 2019 Letter from Chairman Nadler to Attorney General William P. Barr.

<sup>5</sup> May 15, 2019 Letter from Pat A. Cipollone, p.3.



Similarly, your claim that “the Committee – for the first time in American history – voted to recommend that the Attorney General be held in contempt because he *refused to violate the law* by turning over grand-jury materials that he may not lawfully disclose”<sup>6</sup> is also false. First, the subpoena recognizes in the instructions that the Department may withhold any document for which it believes there is an operative privilege, a legal impediment, or other valid reason not to produce, so long as it provides a log describing the document and basis for the withholding. Second, as I have repeatedly stated, the Committee is requesting only that the Department join in an application to the Court for authorization to release documents withheld pursuant to Rule 6(e), and not that it unilaterally produce them. Third, the Committee did not pursue contempt based on the Department’s refusal to join in that application. That point was made clear by me at the Committee’s contempt proceeding,<sup>7</sup> as well as in the bipartisan support for an amendment reinforcing that the contempt was not based on Rule 6(e).<sup>8</sup> Your inaccurate claim to the contrary regarding Rule 6(e) is a red herring.

If the Attorney General feels there are Rule 6(e) materials he cannot produce, he is free to say so, log them pursuant to the subpoena’s instructions, and withhold them pending judicial review. We have previously cited the relevant legal authorities. Thus, the Rule 6(e) dispute need not detain us any longer.

To ensure there is no further misunderstanding, in accord with our attached May 10 letter, we remain ready, willing, and able to continue the accommodations process with the goal of resolving the only two matters at issue – the specific documents referenced in the report, and the non-Rule 6(e) redactions.

#### Legislative Purpose of the Committee’s Investigation<sup>9</sup>

Your May 15 letter also claims that “the Committee has not articulated any proper legislative purpose for pursuing inquiries that duplicate matters that were the subject of the Special Counsel’s inquiry.”<sup>10</sup> As an initial matter, the Committee’s work is not limited to the specific areas covered by the Special Counsel’s investigation, both in terms of legislative

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<sup>6</sup> *Id.*

<sup>7</sup> May 8, 2019 Judiciary Committee Mark-up of the Contempt Report at p. 114 (“[I]t has never been our intention, as we have stated before, to ask the Attorney General to violate the law. We have always intended and we have made it very clear that we wanted him to come to court with us to ask for an exemption to Rule 6(e).”); p. 117 (“But the contempt citation is for his ignoring the subpoena, in effect. It was never intended to put him in jeopardy by saying you have to give us 6(e) material.”); p. 175 (“We have no intention and never had any intention of enforcing -- of trying to force the Attorney General or anyone else to give us 6(e) material without going to court.”).

<sup>8</sup> *Id.* at 186-87 (“We have made clear that the 6(e) material is not included for purposes of the subpoena. And if that wasn’t clear enough, when we accepted Mr. Gaetz’s amendment, that is made super clear.”).

<sup>9</sup> This text is adapted from the Committee Report accompanying the contempt resolution against the Attorney General.

<sup>10</sup> May 15, 2019 Letter from Pat A. Cipollone, p.3.



purpose and oversight activities. Regardless, the Committee has previously articulated in great detail the legislative purpose behind its requests and actions, and there can be no doubt about the copious legislative, oversight and Constitutional purposes at issue.<sup>11</sup>

The investigation into the alleged obstruction of justice, public corruption, and other abuses of power by President Donald Trump, his associates, and members of his Administration and related concerns is being undertaken pursuant to the full authority of the Committee under Rule X(1) and applicable law. The purposes of this investigation include but are not limited to: 1) investigating any possible malfeasance, abuse of power, corruption, obstruction of justice, or other misconduct on the part of the President or other members of his Administration; 2) considering whether the conduct uncovered may warrant amending or creating new federal authorities, including among other things, relating to election security, campaign finance, misuse of electronic data, and the types of obstructive behavior and other misconduct the Mueller Report describes;<sup>12</sup> and 3) considering whether any of the conduct described in the Special Counsel's Report warrants the Committee taking any further steps under Congress's Article I powers.

Notably, the Mueller Report presents grave concerns about the susceptibility of the nation's governing institutions to foreign disinformation campaigns and the vulnerability of our election infrastructure. It also demonstrates a compelling need to strengthen laws to improve election security. The redacted Mueller Report, however, does not provide sufficient details for the Committee to perform its own constitutional duty and engage in a thorough and independent investigation based on that Report's findings. It is therefore imperative that the Committee have access to the additional documents, information and testimony necessary for it to effectively investigate possible misconduct, and to consider appropriate legislative, oversight, or other constitutionally warranted responses. The Administration's refusal to comply with the Committee's subpoena and other efforts to obtain information, or to engage in a meaningful accommodations process, therefore continues to thwart the Committee's ability to fulfill its constitutional duties.

The urgency of the Committee's work is highlighted because Russia's hostile actions against the United States and its election process are ongoing. The Justice Department has indicated that Russian influence efforts continued into the 2018 midterm elections.<sup>13</sup> With the 2020 elections looming, this threat to our republic is at risk of recurrence, and Congress must act immediately to address it. Just recently, FBI Director Christopher Wray warned that Russia continues to pose a "very significant counterintelligence threat," and that the U.S. government

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<sup>11</sup> For example, the Committee has previously discussed legislative purpose in Committee Report accompanying the resolution to hold the Attorney General in contempt.

<sup>12</sup> Several bills relevant to the legislative purpose of this investigation have already been introduced and referred to the Committee, including but not limited to: the Special Counsel Independence and Integrity Act, H.R. 197, 116th Cong (2019); the Special Counsel Reporting Act, H.R. 1357, 116th Cong. (2019); the Presidential Pardon Transparency Act, H.R. 1348, 116th Cong. (2019); and the For the People Act of 2019, H.R. 1, 116th Cong. (2019) (now pending in the Senate).

<sup>13</sup> See Criminal Complaint ¶ 14, *United States v. Khusyaynova*, No. 1:18-mj-464 (E.D. Va. Sept. 28, 2018) (alleging Russian national participated in a conspiracy "to interfere with U.S. political and electoral processes, including the 2018 U.S. elections").

“view[ed] 2018 as just kind of a dress rehearsal for the big show in 2020.”<sup>14</sup> Earlier this year, the Director of National Intelligence similarly warned that Russia and other adversaries “probably are already looking to the 2020 U.S. election” to conduct malign influence operations and that “Moscow may employ additional influence toolkits—such as spreading disinformation, conducting hack-and-leak operations, or manipulating data—in a more targeted fashion to influence U.S. policy, actions, and elections.”<sup>15</sup>

In the face of these efforts, and with the 2020 elections approaching, the Committee requires a more complete understanding of Russia’s influence and hacking operations. Among other things, the Committee must be permitted to assess whether the Department and the FBI are devoting sufficient resources to the growing threat, and to consider remedial legislation such as criminal penalties targeting election interference activities or the use of illegally acquired data. For example, in its current form, sections of the Mueller Report describing the structure and actions taken by the Internet Research Agency are heavily redacted.<sup>16</sup> Sections of the Mueller Report describing the hacking activities undertaken by Russian intelligence services likewise contain significant redactions, which impair the ability of the Committee to gain a complete understanding of Russia’s actions.<sup>17</sup> Without this information, the Committee is unable to fully perform its responsibility to protect the impending 2020 elections—and thus our republic itself—from a recurrence of foreign interference.

President Trump’s repeated efforts to interfere with and derail the Special Counsel’s investigations also pose grave concerns. Volume II of Special Counsel Mueller’s Report details “multiple acts by the President that were capable of exerting undue influence over law enforcement investigations, including the Russian-interference and obstruction investigations.”<sup>18</sup> The President’s efforts increased in intensity over time. Once he “became aware that his own conduct was being investigated in an obstruction-of-justice inquiry, he engaged in a second phase of conduct, involving public attacks on the investigation, non-public efforts to control it, and efforts in both public and private to encourage witnesses not to cooperate with the investigation.”<sup>19</sup> These actions “ranged from efforts to remove the Special Counsel and to reverse the effect of the Attorney General’s recusal; to the attempted use of official power to limit the scope of the investigation; to direct and indirect contacts with witnesses with the potential to influence their testimony.”<sup>20</sup> To carry out this campaign of obstruction, President Trump “sought to use his official power outside of usual channels,” including by conducting “one-on-one meetings” with Administration officials or other advisors and by contacting the

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<sup>14</sup> Transcript, *A Conversation with Christopher Wray*, Council on Foreign Relations (Apr. 26, 2019).

<sup>15</sup> Daniel R. Coats, Director of National Intelligence, *Worldwide Threat Assessment of the U.S. Intelligence Community* (Jan. 29, 2019).

<sup>16</sup> Mueller Report, Vol. I, at 15-35.

<sup>17</sup> *Id.* Vol. I, at 35-51.

<sup>18</sup> *Id.* Vol. II, at 157.

<sup>19</sup> *Id.* Vol. II, at 7.

<sup>20</sup> *Id.* Vol. II, at 157.

Attorney General about the Russia investigation after he had been explicitly counseled against doing so.<sup>21</sup>

The Mueller Report contains evidence that in the wake of an attack by a hostile nation against American institutions, President Trump's response was to undermine the investigation rather than take action against the perpetrators. The facts recounted in the Mueller Report make clear the Committee's interest in obtaining more detailed information. The President's "position as the head of the Executive Branch provided him with unique and powerful means of influencing official proceedings, subordinate officers, and potential witnesses."<sup>22</sup>

To protect the rule of law, the Committee requires an immediate and more detailed accounting of these and other actions taken by the President. The Special Counsel "conducted a thorough factual investigation in order to preserve the evidence when memories were fresh and documentary materials were available."<sup>23</sup> As a result, the Committee has sought access to a discrete subset of the fruits of that work – including investigative materials, such as interview reports, as well as evidence, such as contemporaneous notes taken by fact witnesses – that are referenced in the report. The Committee urgently requires access to those materials to perform its core constitutional functions. The Special Counsel has expressly noted the need to avoid "preempt[ing] constitutional processes for addressing presidential misconduct,"<sup>24</sup> and affirmed that "Congress can validly make obstruction-of-justice statutes applicable to corruptly motivated official acts of the President without impermissibly undermining his Article II functions."<sup>25</sup>

As the Special Counsel further noted, the Department has a policy against indicting a sitting president, which the Special Counsel "accepted for purposes of exercising prosecutorial jurisdiction."<sup>26</sup> Congress is therefore the only branch of government able to hold the President to account for improper conduct in our tripartite system, and urgently requires the subpoenaed material to determine whether and how to proceed with its constitutional duty to provide checks and balances on the President and Executive Branch. Otherwise, the President remains insulated from legal consequences and sits above the law. As the Special Counsel emphasized, in our system, "no person in this country is so high that he is above the law."<sup>27</sup>

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<sup>21</sup> *Id.*; see also e.g., *id.* Vol. II at 50-51 (President Trump pulled Attorney General Sessions aside to ask that he "unrecuse" himself from the Russia investigation after the White House Counsel's office directed that Sessions should not be contacted about the matter).

<sup>22</sup> *Id.* Vol. II, at 7.

<sup>23</sup> *Id.* Vol. II, at 2.

<sup>24</sup> *Id.* Vol. II, at 1.

<sup>25</sup> *Id.* Vol. II, at 171.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* Vol. II at 181-82 (citations, quotation marks and brackets omitted).

### The Administration's Efforts to Frustrate Congress' Constitutional Role

You assert in your May 15 letter that my "claim that 'virtually all document requests are going unsatisfied' is contradicted by the facts."<sup>28</sup> But "facts are stubborn things"<sup>29</sup> and a review of them reveals the truth about the Administration's compliance with the President's declaration of war against all of Congress' lawful requests. The following are only a few recent examples of the Judiciary Committee's requests to which the Administration has been unresponsive:

- January 11, 2019 document request from Chairman Nadler to the Department of Justice relating to the Administration's Zero Tolerance Policy.
- February 15, 2019 document request from Chairmen Nadler and Subcommittee Chairs Lofgren, Cicilline, Johnson, Cohen, Bass, and Vice Chair Scanlon to President Trump relating to the President's decision to declare a national emergency to fund the border wall.
- March 7, 2019 document request from Chairman Nadler and Subcommittee Chairman Cicilline to the Department of Justice relating to President Trump's interference with antitrust law enforcement.
- March 22, 2019 follow-up document request from Chairman Nadler and Subcommittee Chair Cohen to the Department of Justice and the White House relating to the President's decision to declare a national emergency to fund the border wall.
- April 8, 2019 document request from Chairs Nadler, Scott, Neal, Cummings, and Pallone to the Department of Justice, Department of Health & Human Services, and the White House relating to the Administration's decision not to defend the Affordable Care Act.
- April 8, 2019 request for information from Chairman Nadler, Subcommittee Chair Bass, and Reps. Jeffries, Jackson Lee, and Richmond to the Department of Justice and the Bureau of Prisons for information about the implementation of the "First Step Act."
- April 15, 2019 request for documents and information from Chairs Nadler, Cummings, and Thompson to the White House and the Department of Homeland Security relating to the Administration's plan to use political retribution as to the basis for relocating detained immigrants and misusing related funds.
- April 16, 2019 request for documents and information from Chairman Nadler and Subcommittee Chairs Cohen and Lofgren to the Department of Homeland Security relating to the President's comments about offering pardons to Department personnel.

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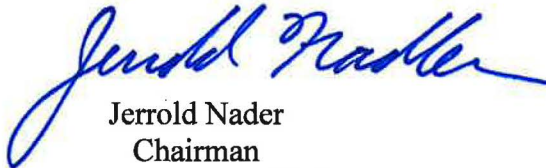
<sup>28</sup> May 15, 2019 Letter from Pat A. Cipollone, p. 1.

<sup>29</sup> John Adams, "Adams' Argument for the Defense: 3-4 December 1770," *Founders Online*, National Archives.

- April 25, 2019 request for documents and information from Chairs Nadler, Cummings, and Thompson to the Department of Homeland Security relating to the removal of members of the Department's senior leadership.

Given your statement that your office is prepared to "work with the Committee through the constitutionally mandated accommodation process to provide the Committee with materials it can properly request,"<sup>30</sup> the Committee's staff is prepared at any time to resume discussions regarding the open issues related to the April 18 subpoena, as well as the many other outstanding requests, such as those listed above, to which the Administration has not responded. To attempt to cut through our disputes, I am prepared to make my staff available at a mutually convenient time to meet with your staff regarding these issues. I hope you will take us up on that offer.

Sincerely,



Jerrold Nader  
Chairman  
Committee on the Judiciary

cc: Hon. Doug Collins, Ranking Member

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<sup>30</sup> May 15, 2019 Letter from Pat A. Cipollone, p. 12.

## CIVIL COVER SHEET

JS-44 (Rev. 6/17 DC)

<b>I. (a) PLAINTIFFS</b> Committee on the Judiciary, United States House of Representatives  (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____ (EXCEPT IN U.S. PLAINTIFF CASES)	<b>DEFENDANTS</b> Donald F. McGahn II 51 Louisiana Avenue, N.W. Washington, D.C. 20001  COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Douglas N. Letter Office of General Counsel, U.S. House of Representatives 219 Cannon House Office Building Washington, D.C. 20515	ATTORNEYS (IF KNOWN) William A. Burck Quinn Emanuel Urquhart & Sullivan 1300 I St. NW, Suite 900 Washington, D.C. 20005

<b>II. BASIS OF JURISDICTION</b> (PLACE AN x IN ONE BOX ONLY) <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <input checked="" type="radio"/> 1 U.S. Government Plaintiff         </div> <div style="width: 48%;"> <input type="radio"/> 3 Federal Question (U.S. Government Not a Party)         </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 48%;"> <input type="radio"/> 2 U.S. Government Defendant         </div> <div style="width: 48%;"> <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)         </div> </div>	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) <b>FOR DIVERSITY CASES ONLY!</b> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
	PTF	DFT		PTF	DFT																				
Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4																				
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Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																				

## IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<input type="radio"/> <b>A. Antitrust</b>  <input type="checkbox"/> 410 Antitrust	<input type="radio"/> <b>B. Personal Injury/Malpractice</b>  <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input type="radio"/> <b>C. Administrative Agency Review</b>  <input type="checkbox"/> 151 Medicare Act  <u>Social Security</u> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <u>Other Statutes</u> <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> <b>D. Temporary Restraining Order/Preliminary Injunction</b>  Any nature of suit from any category may be selected for this category of case assignment.  *(If Antitrust, then A governs)*
<input checked="" type="radio"/> <b>E. General Civil (Other)</b> OR <input type="radio"/> <b>F. Pro Se General Civil</b>			
<u>Real Property</u> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property  <u>Personal Property</u> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<u>Bankruptcy</u> <input type="checkbox"/> 422 Appeal 27 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <u>Prisoner Petitions</u> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement  <u>Property Rights</u> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent – Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<u>Federal Tax Suits</u> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609  <u>Forfeiture/Penalty</u> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other  <u>Other Statutes</u> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)

<input type="radio"/> <b>G. Habeas Corpus/ 2255</b>  <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> <b>H. Employment Discrimination</b>  <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)  <i>*(If pro se, select this deck)*</i>	<input type="radio"/> <b>I. FOIA/Privacy Act</b>  <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act)  <i>*(If pro se, select this deck)*</i>	<input type="radio"/> <b>J. Student Loan</b>  <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> <b>K. Labor/ERISA (non-employment)</b>  <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> <b>L. Other Civil Rights (non-employment)</b>  <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> <b>M. Contract</b>  <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> <b>N. Three-Judge Court</b>  <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

**V. ORIGIN**  
☒ 1 Original Proceeding  
 ☐ 2 Removed from State Court  
 ☐ 3 Remanded from Appellate Court  
 ☐ 4 Reinstated or Reopened  
 ☐ 5 Transferred from another district (specify)  
 ☐ 6 Multi-district Litigation  
 ☐ 7 Appeal to District Judge from Mag. Judge  
 ☐ 8 Multi-district Litigation – Direct File

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)**  
 Violation of U.S. Const., Art. 1; duly authorized, issued, and served Congressional subpoena.

<b>VII. REQUESTED IN COMPLAINT</b>	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	<b>DEMAND \$</b>	Check YES only if demanded in complaint <b>JURY DEMAND:</b> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
<b>VIII. RELATED CASE(S) IF ANY</b>	(See instruction)	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	If yes, please complete related case form

DATE: August 7, 2019	SIGNATURE OF ATTORNEY OF RECORD: /s/ Douglas N. Letter
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**INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44**  
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.



## District of Columbia

Civil Action No. 1:19-cv-2379

*Signature of Clerk or Deputy Clerk*



Civil Action No. 1:19-cv-2379

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_ .

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I returned the summons unexecuted because \_\_\_\_\_ ; or

☐ Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: